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Conference Room, Suite 700
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Washington, DC 20002

RESERVATIONS: (202) 741–6008

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0554; Directorate Identifier 2010–NM–082–AD; Amendment 39–16476; AD 2010–21–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. That AD currently requires modifying the auxiliary hydraulic power system (including doing all applicable related investigative and corrective actions). This new AD requires these same actions, using corrected service information. This AD was prompted by fuel system reviews conducted by the manufacturer, as well as reports of electrically shorted wires in the right wheel well and evidence of arcing on the auxiliary hydraulic pump power cables, which are routed within the tire burst area. We are issuing this AD to prevent electrically shorted wires or arcing at the auxiliary hydraulic pump power cables, which could result in a fire in the wheel well. We are also issuing this AD to reduce the potential of an ignition source adjacent to the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective November 18, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of November 18, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.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 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: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210; e-mail *ken.sujishi@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede airworthiness directive (AD) 2009–07–04, amendment 39–15863 (74 FR 14460, March 31, 2009). That AD applies to the specified products. The NPRM published in the **Federal Register** on June 28, 2010 (75 FR 36577). That NPRM proposed to continue to require modifying the auxiliary hydraulic power system (including doing all applicable related investigative and corrective actions), using corrected service information.

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 relevant data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 21 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Modification	Between 4 and 11 work-hours × $85 per hour = Between $340 and $935.	Up to $4,870	Between $5,210 and $5,805.	Between $109,410 and $121,905.

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2009–07–04, Amendment 39–15863 (74 FR 14460, March 31, 2009), and adding the following new AD:

2010–21–16 McDonnell Douglas Corporation: Amendment 39–16476; Docket No. FAA–2010–0554; Directorate Identifier 2010–NM–082–AD.

Effective Date

(a) This airworthiness directive (AD) is effective November 18, 2010.

Affected ADs

(b) This AD supersedes AD 2009–07–04, Amendment 39–15863.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model MD–90–30 airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin MD90–29A021, Revision 2, dated March 16, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic Power.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer, as well as reports of electrically shorted wires in the right wheel well and evidence of arcing on the auxiliary hydraulic pump power cables, which are routed within the tire burst area. The Federal Aviation Administration is issuing this AD to prevent electrically shorted wires or arcing at the auxiliary hydraulic pump power cables, which could result in a fire in the wheel well. We are also issuing this AD to reduce the potential of an ignition source adjacent to the fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss 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.

Replacement

(g) Within 18 months after the effective date of this AD, modify the auxiliary hydraulic power system, and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–29A021, Revision 2, dated March 16, 2010. Do all applicable related investigative and corrective actions before further flight.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office, 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: Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210.

(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.

Related Information

(i) For more information about this AD, contact Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5353; fax (562) 627–5210; e-mail *ken.sujishi@faa.gov.*

Material Incorporated by Reference

(j) You must use the service information contained in Boeing Alert Service Bulletin MD90–29A021, Revision 2, dated March 16, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Alert Service Bulletin MD90–29A021, Revision 2, dated March 16, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the service information at the FAA, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on October 1, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25440 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0672; Directorate Identifier 2010–NM–047–AD; Amendment 39–16473; AD 2010–21–13]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, DC–10–30, DC–10–30F (KDC–10), DC–10–40, and DC–10–40F Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires installing a support bracket and coupler on the left and right wing-to-fuselage transition, and metallic overbraid on the left and right leading edge wire assembly. This AD was prompted by fuel system reviews conducted by the manufacturer, as well as reports that the fuel quantity system was affected by lightning-induced transients. We are issuing this AD to prevent lightning-induced transients to the fuel quantity indication system, which could cause voltage levels to go beyond original design levels between fuel tank probes and structure, and become a potential ignition source at the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective November 18, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 18, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.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 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: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210; e-mail *samuel.lee@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM was published in the **Federal Register** on July 7, 2010 (75 FR 38943). That NPRM proposed to require installing a support bracket and coupler on the left and right wing-to-fuselage transition, and metallic overbraid on the left and right leading edge wire assembly.

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 relevant data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial changes. We have determined that these minor changes:

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

Costs of Compliance

We estimate that this AD affects 61 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation	28 work-hours × $85 per hour = $2,380	$999	$3,379	$206,119

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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–13 McDonnell Douglas Corporation: Amendment 39–16473; Docket No. FAA–2010–0672; Directorate Identifier 2010–NM–047–AD.

Effective Date

(a) This AD is effective November 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, DC–10–30, DC–10–30F (KDC–10), DC–10–40, and DC–10–40F airplanes, certificated in any category, as identified in Boeing Service Bulletin DC10–28–262, Revision 1, dated June 9, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent lightning-induced transients to the fuel quantity indication system, which could cause voltage levels to go beyond original design levels between fuel tank probes and structure and become a potential ignition source at the fuel tank, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss 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.

Installation

(g) Within 60 months after the effective date of this AD, install a support bracket and coupler on the left and right wing-to-fuselage transition, and metallic overbraid on the left and right leading edge wire assembly, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–28–262, Revision 1, dated June 9, 2010.

Installation According to Previous Issue of Service Bulletin

(h) Installing a support bracket and coupler on the left and right wing-to-fuselage transition, and metallic overbraid on the left and right leading edge wire assembly, is also acceptable for compliance with the requirements of paragraph (g) of this AD if done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC10–28–262, dated January 6, 2010.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office, 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: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

(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.

Related Information

(j) For more information about this AD, contact Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210; e-mail *samuel.lee@faa.gov.*

Material Incorporated by Reference

(k) You must use Boeing Service Bulletin DC10–28–262, Revision 1, dated June 9, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Boeing Service Bulletin DC10–28–262, Revision 1, dated June 9, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 30, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25442 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0479; Directorate Identifier 2009–NM–220–AD; Amendment 39–16472; AD 2010–21–12]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0070 and 0100 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:

* * * * *

Recently, a brake fire was reported which was caused by a ruptured brake piston. The fire was quickly extinguished but caused damage to the paint and hydraulic/electrical harness and its components. Detailed investigation showed that a hydraulic lock must have been present close to the affected brake creating enough internal pressure to rupture the piston. The most probable scenario for the hydraulic lock is a loosened (not necessarily disconnected) brake QD [quick-disconnect] coupling. Further investigation of the service experience files at Fokker Services showed that more brake fires have occurred on aeroplanes in a pre-mod SBF100–32–127 configuration.

* * * * *

The unsafe condition is loss of braking capability and possible brake fires, which could reduce the ability of the flightcrew to safely land the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 18, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 18, 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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 May 19, 2010 (75 FR 27961). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During 1995, several reports were received of brake QD [quick-disconnect] couplings loosened and/or disconnected during operation. In a few cases, residual brake pressure was trapped in the affected brake, causing asymmetric braking and/or resulting in hot brakes. Loosened couplings may cause a hydraulic leak with the risk of a brake fire. Investigation revealed that the installation of the brake QD couplings must be done with care and that the locking teeth on the light alloy sleeve are prone to wear. The Fokker 70/100 Aircraft Maintenance Manual (AMM) has been revised to include additional information to ensure correct removal and installation of the couplings.

In 1997, Fokker Services issued SBF100–32–106, recommending the introduction of QD couplings with corrosion resistant steel (CRES) sleeves that would prevent excessive wear of the locking teeth on the light alloy sleeve. In response to more reported cases of loosened QD couplings resulting in brake problems, further improved QD couplings were introduced in 2001 through SBF100–32–127. These couplings increase the reliability of the brake system.

Recently, a brake fire was reported which was caused by a ruptured brake piston. The fire was quickly extinguished but caused damage to the paint and hydraulic/electrical harness and its components. Detailed investigation showed that a hydraulic lock must have been present close to the affected brake creating enough internal pressure to rupture the piston. The most probable scenario for the hydraulic lock is a loosened (not necessarily disconnected) brake QD coupling. Further investigation of the service experience files at Fokker Services showed that more brake fires have occurred on aeroplanes in a pre-mod SBF100–32–127 configuration.

In order to reduce the probability of a fluid fire as described in CS (certification specification) 25.863, additional action is deemed necessary.

For the reasons described above, this [European Aviation Safety Agency] AD requires repetitive [detailed] inspections [for wear] of the affected brake QD couplings and replacement of the QD couplings with improved units. Installation of the improved QD couplings terminates the repetitive inspections requirements.

The unsafe condition is loss of braking capability and possible brake fires, which could reduce the ability of the flightcrew to safely land the airplane. 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 16 products of U.S. registry. We also estimate that it will take about 4 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $4,814 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $82,464, or $5,154 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–12 Fokker Services B.V.: Amendment 39–16472. Docket No. FAA–2010–0479; Directorate Identifier 2009–NM–220–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 0070 and 0100 airplanes, certificated in any category, all serial numbers, with any brake quick-disconnect (QD) coupling having part number (P/N) AE70690E, AE70691E, AE99111E, or AE99119E installed.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

During 1995, several reports were received of brake QD couplings loosened and/or disconnected during operation. In a few cases, residual brake pressure was trapped in the affected brake, causing asymmetric braking and/or resulting in hot brakes. Loosened couplings may cause a hydraulic leak with the risk of a brake fire. Investigation revealed that the installation of the brake QD couplings must be done with care and that the locking teeth on the light alloy sleeve are prone to wear. The Fokker 70/100 Aircraft Maintenance Manual (AMM) has been revised to include additional information to ensure correct removal and installation of the couplings.

In 1997, Fokker Services issued SBF100–32–106, recommending the introduction of QD couplings with corrosion resistant steel (CRES) sleeves that would prevent excessive wear of the locking teeth on the light alloy sleeve. In response to more reported cases of loosened QD couplings resulting in brake problems, further improved QD couplings were introduced in 2001 through SBF100–32–127. These couplings increase the reliability of the brake system.

Recently, a brake fire was reported which was caused by a ruptured brake piston. The fire was quickly extinguished but caused damage to the paint and hydraulic/electrical harness and its components. Detailed investigation showed that a hydraulic lock must have been present close to the affected brake creating enough internal pressure to rupture the piston. The most probable scenario for the hydraulic lock is a loosened (not necessarily disconnected) brake QD coupling. Further investigation of the service experience files at Fokker Services showed that more brake fires have occurred on aeroplanes in a pre-mod SBF100–32–127 configuration.

In order to reduce the probability of a fluid fire as described in CS (certification specification) 25.863, additional action is deemed necessary.

For the reasons described above, this [European Aviation Safety Agency] AD requires repetitive [detailed] inspections [for wear] of the affected brake QD couplings and replacement of the QD couplings with improved units. Installation of the improved QD couplings terminates the repetitive inspections requirements.

The unsafe condition is loss of braking capability and possible brake fires, which could reduce the ability of the flightcrew to safely land 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) Do the following actions.

(1) Within 6 months after the effective date of this AD, do a detailed inspection for wear of the brake QD couplings by measuring dimension "A," in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–156, Revision 1, dated June 29, 2009. Repeat the inspection thereafter at the applicable intervals specified in Table 1 of this AD, except as required by paragraph (g)(2) of this AD.

TABLE 1—REPETITIVE INSPECTION INTERVALS

If dimension "A" is—	Repeat the inspection at intervals not to exceed—
Greater than or equal to 0.76 mm	6 months.
Less than 0.76 mm but greater than or equal to 0.72 mm	3 months.
Less than 0.72 mm but greater than or equal to 0.68 mm	30 days.
Less than 0.68 mm but greater than or equal to 0.61 mm	7 days.
Less than 0.61 mm but greater than 0.53 mm	24 hours.

(2) If, during any inspection required by paragraph (g)(1) of this AD, dimension "A" on any brake QD coupling is less than or equal to 0.53 mm, before further flight, replace the affected brake QD coupling with an improved unit having P/N AE73059E or P/N AE73091E, as applicable, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–156, Revision 1, dated June 29, 2009.

(3) Within 24 months after the effective date of this AD, replace all remaining brake QD couplings having P/N AE70690E, P/N AE70691E, P/N AE99111E, and P/N AE99119E with improved units, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–32–156, Revision 1, dated June 29, 2009.

(4) Installation of brake QD couplings with an improved unit having P/N AE73059E or P/N AE73091E at all locations terminates the repetitive inspections required by paragraph (g)(1) of this AD.

(5) Replacing the brake QD couplings is also acceptable for compliance with the corresponding requirements of paragraphs (g)(1), (g)(2), and (g)(3) of this AD if done before the effective date of this AD, in accordance with any of the service bulletins specified in Table 2 of this AD:

TABLE 2—FOKKER CREDIT SERVICE BULLETINS

Fokker Service Bulletins	Revision	Date
Fokker Performa Service Bulletin SBF100–32–127, including Appendix XIV, dated February 1, 2006.	Original	July 20, 2001.
Fokker Performa Service Bulletin SBF100–32–127, including Appendix XIV, dated February 1, 2006.	1	March 6, 2009.
Fokker Service Bulletin SBF100–32–156	Original	March 6, 2009.

FAA AD Differences

Note 1: 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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; 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 European Aviation Safety Agency Airworthiness Directive 2009–0176, dated August 6, 2009; and Fokker Service Bulletin SBF100–32–156, Revision 1, dated June 29, 2009; for related information.

Material Incorporated by Reference

(j) You must use Fokker Service Bulletin SBF100–32–156, Revision 1, dated June 29, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com;* Internet *http://www.myfokkerfleetcom.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 29, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25449 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0642; Directorate Identifier 2007–NM–332–AD; Amendment 39–16470; AD 2010–21–10]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146 and Avro 146–RJ 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:

* * * [F]uel leaks and failed fasteners [have been reported] in the region of the rear spar root joint attachment fitting at wing rib 2. * * *

* * * * *

The unsafe condition is stress corrosion failures in the region of the rear spar root joint attachment fitting at wing rib 2, which could lead to reduced structural integrity of the wing, and consequent 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 November 18, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 18, 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: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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 July 1, 2010 (75 FR 38058). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

British Aerospace originally issued Service Bulletin (SB) 57–033 in 1989 to detect fuel leaks and failed fasteners in the region of the rear spar root joint attachment fitting at wing rib 2. Accomplishment of this SB was mandated by the [Civil Aviation Authority] CAA United Kingdom AD 044–09–89. Revisions 1 through 7 of this SB were introduced to inspect pre mod HCM01447A standard installations for fuel leaks and loose or broken bolts. Modification HCM01447A

introduced tension bolts in the attachment fitting instead of the previous Hi-Lok bolts.

Revision 8 of the SB introduced inspection instructions for post modification HCM01447A installations because fuel tank leaks and failed fasteners have subsequently been found on aircraft post modification HCM01447A. Inspections of the post-mod HCM01447A standard are required to maintain the structural integrity of the wing. BAE Systems has now published SB 57–033 Revision 9 that specifies additional, calendar-time based, inspection criteria to control the stress corrosion failures of the pre and post modification HCM01447A installations.

EASA AD 2007–0270 supersedes CAA UK AD 044–09–89 and requires the accomplishment of inspections and corrective actions, as necessary, in accordance with BAE Systems SB 57–033 Revision 9.

This [EASA] AD [2007–0270 R1] is revised to clarify that the calendar compliance times are to be counted from the effective date, not from the SB issue date.

The unsafe condition is stress corrosion failures in the region of the rear spar root joint attachment fitting at wing rib 2, which could lead to reduced structural integrity of the wing, and consequent reduced controllability of the airplane. Required actions include a general inspection to identify the type of bolt and nut at each location, external inspections of the bolt installation of the fuel tanks, related investigative actions, and corrective actions, as applicable.

The general inspection includes identifying the type of bolt and nut at each location.

External inspections of the bolt installation include:

- Visually inspecting for proper nut installation, nut seating, and fuel seepage.
- Checking for gaps between the fitting and wing structure.
- Checking the nuts with a suitable torque spanner to the specifications in the torque figures shown in Table 2. of the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006, if Hi-Loks are installed, and
- Doing either an ultrasonic inspection for damaged bolts or torque check of the tension bolts.

Related investigative actions include:

- Inspecting the condition of the sealant at and around all rear spar root joint attachment bolts.
- Checking the bolt for damage or evidence of the nut being tightened to the end of the thread.
- Examining the wear pattern on the seating surfaces of the bolt and nut to determine if the bolt and nut have been evenly seated on the structure.
- Visually inspecting the bolt hole and surrounding area for damage, and
- Confirming that the hole edge radius on the forward face of the rear spar complies with the specifications in Table 4 of the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006.

Corrective actions include either replacing the bolt, or repairing the defect in accordance with approved repair data from BAE Systems. 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.

Explanation of Change to Applicability

We have revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

We reviewed the available data, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 1 product of U.S. registry. We also estimate that it will take about 3 work-hours 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 $255.

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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–10 BAE SYSTEMS (OPERATIONS) LIMITED: Amendment 39–16470. Docket No. FAA–2010–0642; Directorate Identifier 2007–NM–332–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (OPERATIONS) LIMITED Model BAe 146–100A, –200A, and –300A airplanes, and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

* * * [F]uel leaks and failed fasteners [have been reported] in the region of the rear spar root joint attachment fitting at wing rib 2. * * *

* * * * *

The unsafe condition is stress corrosion failures in the region of the rear spar root joint attachment fitting at wing rib 2, which could lead to reduced structural integrity of the wing, and consequent 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) At the applicable time in paragraph (g)(1) or (g)(2) of this AD, do a general visual inspection to identify the type of bolt and nut at each location, in accordance with the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006.

(1) For airplanes on which neither Modification HCM01447A nor repair information leaflet (RIL) HC536H9156 (at any location) has been done as of the effective date of this AD, the compliance time for the inspection is at the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Within 12 months after the effective date of this AD, or within 2 years after the last inspection done in accordance with BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, whichever occurs later, without exceeding 4,000 flight cycles after the last inspection.

(ii) Within 250 flight cycles or 3 months after the effective date of this AD, whichever occurs first.

(2) For airplanes on which either Modification HCM01447A or RIL HC536H9156 (at any location) has been done as of the effective date of this AD, the compliance time for the inspection is at the latest of the times specified in paragraphs (g)(2)(i), (g)(2)(ii), and (g)(2)(iii) of this AD.

(i) Before the accumulation of 4,000 total flight cycles.

(ii) Within 4,000 flight cycles after all bolts are inspected and replaced in accordance with BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033.

(iii) Within 12 months after the effective date of this AD.

(h) At the applicable time in paragraph (g)(1) or (g)(2) of this AD, do detailed inspections of the bolt installation for proper nut installation, nut seating, and fuel seepage; a detailed inspection for gaps between the fitting and wing structure; if Hi-Loks are installed, measure the torque of the nuts to determine the specifications in the torque figures shown in Table 2. of the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006; and either an ultrasonic inspection for damaged bolts or a torque measurement of the tension bolts to determine the specifications in the torque figures shown in Table 3 of the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006. Do all actions in accordance with the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006.

(i) If, during any inspection required by paragraph (h) of this AD, any defect (*e.g.,* evidence of fuel seepage, damaged bolts or low bolt torque, loose or rotating nuts, suspect integrity of the bolt/nut assembly, or gaps between the fitting and wing structure) is found, before further flight, do the actions specified in paragraphs (i)(1), (i)(2), (i)(3), (i)(4), and (i)(5) of this AD, in accordance with the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006.

(1) Do a detailed inspection of the sealant for cracks at and around all rear spar root joint attachment bolts.

(2) Do a detailed inspection of the bolt for damage or evidence of the nut being tightened to the end of the thread.

(3) Do a detailed inspection of the wear pattern on the seating surfaces of the bolt and nut to determine if the bolt and nut have been evenly seated on the structure.

(4) Do a detailed inspection of the bolt hole and surrounding area for damage.

(5) Do a detailed inspection to determine that the hole edge radius on the forward face of the rear spar meets the dimensions specified in Table 4 of the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006.

(j) If during any inspection required by paragraph (h) or (i) of this AD, any defects (*e.g.,* evidence of fuel seepage, damaged bolts or low bolt torque, loose or rotating nuts, suspect integrity of the bolt/nut assembly, gaps between the fitting and wing structure, cracked sealant, bolt damage or evidence of the nut being tightened to the end of the thread, uneven seating of the bolt and nut, bolt hole and surrounding area damage, or hole edge radius out of dimensions specified in Table 4 of the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006), is found, before further flight, do all applicable correction actions, which include either replacing the bolt or repairing the defect, in accordance with the Accomplishment Instructions of BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006.

(k) Repeat the inspections in paragraph (h) of this AD thereafter, at the applicable time specified in Table 1 of this AD, for each individual location.

TABLE 1—COMPLIANCE TIMES FOR REPEAT INSPECTIONS

If the location has—	Then repeat the inspection—
A Hi-Lok bolt	Within 4,000 flight cycles or 24 months, whichever occurs earlier, after doing the last inspection.
A tension bolt that was not replaced during the inspections in paragraphs (h) and (i) of this AD and no defects were found.	Within 8,000 flight cycles or 48 months, whichever occurs earlier, after doing the last inspection.

TABLE 1—COMPLIANCE TIMES FOR REPEAT INSPECTIONS—Continued

If the location has—	Then repeat the inspection—
A tension bolt that was replaced as required by paragraph (j) of this AD	Within 4,000 flight cycles or 24 months, whichever occurs earlier after doing the replacement.
A tension bolt that was not replaced and any defects were repaired as required by paragraph (j) of this AD.	Within 4,000 flight cycles or 24 months, whichever occurs earlier after doing the repair specified in paragraph (j) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although BAE SYSTEMS (OPERATIONS) LIMITED Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006, allows additional time to rectify the defect for the corrective action depending on the condition, this AD requires rectifying the defect before further flight.

Other FAA AD Provisions

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

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

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

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

Related Information

(m) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2007–0270 R1, dated November 7, 2007; and BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006; for related information.

Material Incorporated by Reference

(n) You must use BAE SYSTEMS (OPERATIONS) LIMITED Inspection Service Bulletin ISB.57–033, Revision 9, dated October 10, 2006; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact BAE SYSTEMS (OPERATIONS) LIMITED, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; e-mail *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 29, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25469 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0754 Directorate Identifier 2010–CE–039–AD; Amendment 39–16475; AD 2010–21–15]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–500 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) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found that certain regions of the elevators, elevators trim tabs, and ailerons do not present drain holes to avoid water accumulation inside of these flight control surfaces. Internal water accumulation may lead to flight control surfaces unbalancing possibly reducing the flutter margins, which could result in loss of airplane control.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 18, 2010.

On November 18, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; *fax:* (816) 329–4090.

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 August 3, 2010 (75 FR 45558). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found that certain regions of the elevators, elevators trim tabs, and ailerons do

not present drain holes to avoid water accumulation inside of these flight control surfaces. Internal water accumulation may lead to flight control surfaces unbalancing possibly reducing the flutter margins, which could result in loss of airplane control.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

The MCAI requires you to drill new drain holes in the elevators, elevators trim tabs, and ailerons surfaces. 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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 78 products of U.S. registry. We also estimate that it will take about 18 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $128 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $129,324 or $1,658 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 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 Management Facility 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–15 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16475; Docket No. FAA–2010–0754; Directorate Identifier 2010–CE–039–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model EMB–500 airplanes, serial numbers 50000005 through 50000134, 50000136, 50000137, and 50000139 through 50000165, certificated in any category.

Subject

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

Reason

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

It has been found that certain regions of the elevators, elevators trim tabs, and ailerons do not present drain holes to avoid water accumulation inside of these flight control surfaces. Internal water accumulation may lead to flight control surfaces unbalancing possibly reducing the flutter margins, which could result in loss of airplane control.

Since this condition may occur in other airplanes of the same type and affects flight safety, a corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit.

The MCAI requires you to drill new drain holes in the elevators, elevators trim tabs, and ailerons surfaces.

Actions and Compliance

(f) Unless already done, within the next 24 calendar months after November 18, 2010 (the effective date of this AD), rework the elevators, elevators trim tabs, and ailerons surfaces by drilling additional drain holes in them following Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Service Bulletin 500–57–0001, dated April 28, 2010.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, 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: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4146; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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

(h) Refer to MCAI Agência Nacional de Aviação Civil—Brazil (ANAC), AD No.: 2010–07–01, dated August 9, 2010; and Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Service Bulletin 500–57–0001, dated April 28, 2010, for related information.

Material Incorporated by Reference

(i) You must use Empresa Brasileira de Aeronáutica S.A. (EMBRAER) Service Bulletin 500–57–0001, dated April 28, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact EMBRAER Empresa Brasileira de Aeronáutica S.A., Phenom Maintenance Support, Av. Brig. Farina Lima, 2170, Sao Jose dos Campos—SP, CEP: 12227–901—PO Box: 38/2, BRASIL, *telephone:* ++55 12 3927–5383; *fax:* ++55 12 3927–2610; *E-mail: reliability.executive@embraer.com.br; Internet: http://www.embraer.com.br.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD 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.*

Issued in Kansas City, Missouri, on September 30, 2010.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25283 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0969; Directorate Identifier 2009–SW–62–AD; Amendment 39–16461; AD 2010–21–01]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (Eurocopter) Model AS350B, BA, B1, B2, B3, D, AS355E, F, F1, F2, and N Helicopters

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the specified Eurocopter model helicopters. This AD results from a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that the AD is issued following a report of a crack discovered in the area of the center cross-member at station X 2325, at the attachment point of the yaw channel ball-type control sheath stop, of a Model AS355N helicopter fitted with the collective-to-yaw control coupling. Investigations revealed that the helicopter did not have the structural doublers, which are combined with the collective-to-yaw control coupling installation. Repetitive loads on the non-modified cross-member may cause it to crack. A crack can reduce the yaw control travel. This AD requires actions that are intended to prevent reduced yaw control and subsequent loss of control of the helicopter.

DATES: This AD becomes effective on October 29, 2010.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of October 29, 2010.

We must receive comments on this AD by December 13, 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 your comments electronically.
- *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.

You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (800) 232–0323, fax (972) 641–3510.

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

FOR FURTHER INFORMATION CONTACT: Gary Roach, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

EASA, which is the Technical Agent for the Member States of the European Community, has issued Emergency AD No. 2007–0139–E, dated May 15, 2007 (corrected May 23, 2007), to correct an unsafe condition for these French-certificated helicopters. The MCAI AD states that the AD is issued following one report of a crack discovered in the area of the center cross-member at station X 2325, at the attachment point of the yaw channel ball-type control sheath stop, of an AS355N helicopter with the collective-to-yaw control coupling. Investigations revealed that the helicopter did not have the structural doublers, which are combined with the collective-to-yaw control coupling installation. Repetitive loads on the non-modified cross-member may cause it to crack. A crack can reduce the yaw control travel.

You may obtain further information by examining the MCAI AD and any related service information in the AD docket.

Related Service Information

Eurocopter has issued an Emergency Alert Service Bulletin (EASB), dated April 11, 2007, that contains 3 different numbers (Nos. 53.00.37, 53.00.11, and 53.00.23) for Eurocopter Model 350, 355, 550, and 555 helicopters. EASB No. 53.00.37 relates to 2 Model 350 (350 BB and 350 L1) helicopters that are not type-certificated in the United States. EASB No. 53.00.11 relates to 4 Model 550 and 6 Model 555 military helicopters that are not type-certificated in the United States. The actions described in the MCAI AD are intended to correct the same unsafe condition as that identified in the service information.

FAA's Evaluation and Unsafe Condition Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design, EASA, their Technical Agent, has notified us of the unsafe condition described in the MCAI AD and service information. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include "Docket No. FAA–2010–0969; Directorate Identifier 2009–SW–62–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Differences Between This AD and the MCAI AD

This AD differs from the MCAI AD as follows:

- We use the word "inspect" to describe the actions required by an inspector versus the word "check," which is how we describe the actions allowed by a pilot.
- We refer to the compliance time as "hours time-in-service (TIS)" rather than "flying hours."
- We do not include the military model helicopters in the applicability.

Costs of Compliance

We estimate that this AD will affect about 725 helicopters of U.S. registry. We also estimate that it will take about 1 work-hour per helicopter to inspect for the presence of the center cross member and doublers under the cabin floor and determine whether there is a crack in the center cross member. The average labor rate is $85 per work-hour. Required parts will cost about $150 per helicopter. Based on these figures, we estimate the cost of the AD on U.S. operators is $189,135, assuming 7 helicopters have cracks and require an additional 8 work-hours of repair labor and $2,000 in repair design and parts.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. We find that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because of the short compliance time, within 10 hours TIS or 1 month, whichever occurs first, to inspect for the presence of the cross-member at station X 2165 and the doublers at X 2325 and Y 269 and installing them within 55 hours TIS if they are missing. Therefore, we have determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. However, we invite you to send us any written data, views, or arguments concerning this AD. Send your comments to an address listed under the **ADDRESSES** section of this AD. Include "Docket No. FAA–2010–0969; Directorate Identifier 2009–SW–62–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

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 product(s) 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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–01 Eurocopter France: Amendment 39–16461. Docket No. FAA–2010–0969; Directorate Identifier 2009–SW–62–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on October 29, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Eurocopter France Model AS350B, BA, B1, B2, B3, D, AS355E, F, F1, F2, and N helicopters, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that AD is issued following one report of a crack discovered in the area of the center cross-member at station X 2325, at the attachment point of the yaw channel ball-type control sheath stop of an AS355N helicopter with the collective-to-yaw control coupling. Investigations revealed that the helicopter did not have the structural doublers installed, which are combined with the collective-to-yaw control coupling installation. Repetitive loads on the non-modified cross-member may cause it to crack. A crack can reduce the yaw control travel. The AD requires actions that are intended to prevent reduced yaw control and subsequent loss of control of the helicopter.

Actions and Compliance

(e) Within 10 hours time-in-service (TIS) or within 1 month, whichever occurs first, unless already done, determine whether the cross-member (numbered "1") at station X 2165 and the two doublers (numbered "2" and "3") at stations X 2325 and Y 269 are installed as shown in Figure 1 of Eurocoper Emergency Alert Service Bulletin (EASB) No. 53.00.37, dated April 11, 2007 (EASB 53.00.37), for the Model AS350 helicopters and EASB No. 53.00.23, dated April 11, 2007 (EASB 53.00.23), for the Model AS355 helicopters.

Note: The one Eurocopter EASB contains 3 different numbers (Nos. 53.00.37, 53.00.11, and 53.00.23) for 4 different Eurocopter model helicopters. EASB 53.00.37 relates to 2 Model 350 (350 BB and 350 L1) helicopters that are not type-certificated in the United States; and EASB No. 53.00.11 relates to 4 Model 550 and 6 Model 555 military helicopters that are not type-certificated in the United States.

(f) If the cross-member (numbered "1") and doublers (numbered "2" and "3") are not installed, before further flight, inspect for a crack in the center cross-member (numbered "4") in the area around the attachment point of the tail rotor directional ball-type control as shown in Figure 1 of EASB 53.00.37 for the Model AS350 helicopters or EASB 53.00.23 for the Model AS355 helicopters.

(1) If you find a crack, before further flight, replace the unairworthy center cross-member (Numbered "4") with an airworthy center cross-member and comply with paragraph (g) of this AD.

(2) If you do not find a crack, before further flight, inspect the tail rotor control rigging.

(g) Within 55 hours TIS, install the cross-member (Numbered "1") at station X 2165 and the 2 doublers (Numbered "2" and "3") at stations X 2325 and Y 269 by following the Appendix and the referenced Figures 2 and 3 of EASB 53.00.37 for the Model AS350 helicopters and EASB 53.00.23 for the Model AS355 helicopters.

Differences Between the FAA AD and the MCAI AD

(h) This AD differs from the MCAI AD as follows:

(1) We use the word "inspect" to describe the actions required by an inspector versus the word "check," which is how we describe the actions allowed by a pilot.

(2) We refer to the compliance time as hours TIS rather than flying hours.

(3) We do not include the military model helicopters.

Other Information

(i) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, Rotorcraft Directorate, FAA, ATTN: Gary Roach, Aviation Safety Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5130, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(j) EASA Emergency AD No. 2007–0139–E, dated May 15, 2007 (corrected May 23, 2007), contains related information.

Joint Aircraft System/Component (JASC) Code

(k) The JASC Code is 5320—Fuselage Misc. Structure.

Material Incorporated by Reference

(l) You must use the specified portions of Eurocoper Emergency Alert Service Bulletin No. 53.00.37 for the AS350 model helicopters and No. 53.00.23 for the AS355 model helicopters, both dated April 11, 2007, to do the actions required.

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

(2) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (800) 232–0323, fax (972) 641–3510.

(3) You may review copies at the FAA, Office of the Regional Counsel, DOT/FAA Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; 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/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on September 23, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–25273 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0779; Directorate Identifier 2009–SW–84–AD; Amendment 39–16467; AD 2010–21–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France (ECF) Model AS350B3 and EC130 B4 Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the Eurocopter France Model AS350B3 and EC130 B4 helicopters. This amendment is prompted by a mandatory continuing airworthiness information (MCAI) AD issued by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. The MCAI AD states that a dormant failure of one of the two contactors 53Ka or 53Kb can occur following certain modifications. Failure of a contactor can prevent switching from "IDLE" mode to "FLIGHT" mode during autorotation training making it impossible to execute a power recovery and compelling the pilot to continue the autorotation to the ground. This condition, if not corrected, can lead to an unintended touchdown to the ground during a practice autorotation at a flight-idle power setting, damage to the helicopter, and injury to the occupants.

DATES: Effective November 18, 2010.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 18, 2010.

ADDRESSES: You may get the service information identified in this AD from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.*

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: DOT/FAA Southwest Region, Rotorcraft Directorate, Safety Management Group, ASW–112, Ed Cuevas, Aviation Safety Engineer, 2601 Meacham Blvd., Fort Worth, Texas 76137; *telephone:* 817–222–5135; *fax:* 817–222–5961.

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 ECF Model AS350B3 and EC130 B4 helicopters on August 3, 2010. That NPRM was published in the **Federal Register** on August 11, 2010 (75 FR 48615). That NPRM proposed to require inspecting the pilot's and co-pilot's throttle twist for proper operation of the contactors, which provide for changes between the "IDLE" and "FLIGHT" positions of the throttle twist grip control.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No. 2009–0256, dated December 2, 2009, to correct an unsafe condition for the ECF Model AS350B3 and EC130 B4 helicopters. EASA advises that analysis shows a dormant failure of one of the two contactors 53Ka or 53Kb can occur following the modification of the Model AS350B3 by MOD 073254 and modification of the Model EC130 B4 by MOD 073773. Failure of a contactor can prevent switching from "IDLE" mode to "FLIGHT" mode during autorotation training making it impossible to execute a power recovery and compelling the pilot to continue the autorotation to the ground. This condition, if not corrected, can lead to an unintended touchdown to the ground during a practice autorotation at a flight-idle power setting, damage to the helicopter, and injury to the occupants.

Related Service Information

ECF has issued Alert Service Bulletin (ASB) No. 05.00.61 for the Model AS350B3 helicopters and ASB No. 05A009 for the EC130 B4 helicopters. Both ASBs are dated November 16, 2009. Both ASBs specify a functional check of the two contactors 53Ka and 53Kb, which are used to switch from "IDLE" to "FLIGHT" mode or vice versa. The ASBs also specify repetitive checking of the contactors for correct opening and closing to detect this dormant failure. ECF states that it will be preparing a modification, which will cancel the ASBs, in the very near future. Once the manufacturer develops corrective terminating actions, we anticipate further rulemaking.

FAA's Evaluation and Unsafe Condition Determination

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

Differences Between this AD and the MCAI AD

We refer to flying hours as hours time-in-service (TIS). Also, we refer to maintenance actions as inspections rather than checks.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comments on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD will affect about 116 of the Model EC130 B4 helicopters and 231 of the Model AS350B3 helicopters for a total of 347 helicopters of U.S. registry. We also estimate that it will take about 0.5 work-hour per helicopter to inspect and about 0.5 work-hour per helicopter to replace a micro-switch. The average labor rate is $85 per work-hour. Required parts cost about $538 for the T3933–3 microswitch. Based on these figures, we estimate that the cost of this AD on U.S. operators is $21,714, assuming 4 microswitches are replaced on the Model EC130 B4 helicopters and 8 microswitches are replaced on the Model AS350B3 helicopters.

Regulatory Findings

We have 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 that the 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 an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2010–21–07 Eurocopter France: Amendment 39–16467; Docket No. FAA–2010–0779; Directorate Identifier 2009–SW–84–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on November 18, 2010.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model AS350B3 and EC130 B4 helicopters, certificated in any category, with the ARRIEL 2B1 engine with the two-channel Full Authority Digital Engine Control (FADEC), and with new twist grip modification (MOD) 073254 for the Model AS350B3 helicopter or MOD 073773 for the Model EC130 B4 helicopter, installed.

Reason

(d) The mandatory continuing airworthiness information (MCAI) AD states that analysis shows a "dormant failure" of one of the two contactors, 53Ka or 53Kb, can occur following the introduction of MOD 073254 or MOD 073773. Failure of a contactor can prevent switching from "IDLE" mode to "FLIGHT" mode during autorotation training making it impossible to recover from the practice autorotation and compelling the pilot to continue the autorotation to the ground. This condition, if not corrected, can lead to an unintended touchdown to the ground at a flight-idle power setting during a practice autorotation, damage to the helicopter, and injury to the occupants.

Actions and Compliance

(e) Before the next practice autorotation or on or before 100 hours time-in-service (TIS), whichever occurs first, unless accomplished previously, and thereafter at intervals not to exceed 600 hours TIS:

(1) Inspect for the proper operation of contactors 53Ka and 53Kb by rotating the pilot and co-pilot throttle twist grip controls between the "IDLE" and "FLIGHT" position in accordance with the Accomplishment Instructions, paragraph 2.B.2, of Eurocopter Alert Service Bulletin (ASB) No. 05.00.61, dated November 16, 2009, for the Model AS350B3 helicopters or ASB No. 05A009, dated November 16, 2009, for the Model EC130 B4 helicopters, as appropriate for your model helicopter.

(2) Test the pilot and co-pilot throttle twist grip controls for proper functioning. If the throttle twist grip controls are not functioning properly, repair the controls.

Differences Between This AD and the MCAI AD

(f) We refer to flight hours as hours TIS. Also, we refer to maintenance actions as inspections rather than checks. Finally,

Other Information

(g) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, *ATTN:* DOT/FAA Southwest Region, Ed Cuevas, ASW–112, Aviation Safety Engineer, Rotorcraft Directorate, Safety Management Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5355, fax (817) 222–5961, has the authority to approve AMOCs for this AD, if requested, using the procedures found in 14 CFR 39.19.

Related Information

(h) MCAI AD No. 2009–0256, dated December 2, 2009, contains related information.

Joint Aircraft System/Component (JASC) Code

(i) The JASC Code is 7697: Engine Control System Wiring.

Material Incorporated by Reference

(j) You must use Eurocopter Alert Service Bulletin ASB No. 05.00.61 or 05A009, both dated November 16, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (800) 232–0323, fax (972) 641–3710, or at *http://www.eurocopter.com.*

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 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/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on September 29, 2010.

Kim Smith,

Manager, Rotorcraft Directorate, Aircraft Certification Service

[FR Doc. 2010–25270 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1229; Directorate Identifier 2009–NM–106–AD; Amendment 39–16471; AD 2010–21–11]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) 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:

A specific batch of nose landing gear (NLG) and NLG door selector valves, part number (P/N) 601R75146–1 (Kaiser Fluid Technologies P/N 750006000), may have had their end caps incorrectly lock-wired and/or incorrectly torqued during assembly. This condition can lead to the end cap backing off, with consequent damage to a seal and internal leakage within the valve. Subsequently, if electrical power is transferred or removed from the aircraft before the NLG safety pin is installed, any pressure, including residual pressure, in the No. 3 hydraulic system can result in an uncommanded NLG retraction and/or uncommanded opening of the NLG doors. There have been six cases reported on CL[-]600–2B19 aircraft, one of which resulted in the collapse of the NLG at the departure gate.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 18, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 18, 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: Cesar Gomez, Aerospace Engineer,

Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

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 January 5, 2010 (75 FR 258). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> A specific batch of nose landing gear (NLG) and NLG door selector valves, part number (P/N) 601R75146–1 (Kaiser Fluid Technologies P/N 750006000), may have had their end caps incorrectly lock-wired and/or incorrectly torqued during assembly. This condition can lead to the end cap backing off, with consequent damage to a seal and internal leakage within the valve. Subsequently, if electrical power is transferred or removed from the aircraft before the NLG safety pin is installed, any pressure, including residual pressure, in the No. 3 hydraulic system can result in an uncommanded NLG retraction and/or uncommanded opening of the NLG doors. There have been six cases reported on CL[-]600–2B19 aircraft, one of which resulted in the collapse of the NLG at the departure gate.
>
> This [Canadian] directive mandates [an inspection of the NLG and NLG selector valves to determine the serial number and marking of the part and] a check [to determine the torque value and correct lockwire installation] of the [affected] NLG and NLG door selector valves installed on all aircraft in the Applicability section * * *. Depending on the results, replacement, rework and/or additional identification of the valves may be required.

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 considered the comments received.

Request for Model Designation Consistency

Comair, Inc. states that in the NPRM, the Summary, Discussion, and paragraph (e), refer to the airplanes as Model "CL600–2B19" instead of "CL–600–2B19."

From this comment, we infer that Comair, Inc. requests that we revise the identified sections of the NPRM for model designation consistency. In the Summary, Discussion, and paragraph (e) of this AD, we are quoting from Canadian Airworthiness Directive CF–2009–19, dated April 29, 2009. However, for clarity, we have made the change to "CL[-]600–2B19" in the specified sections of this AD.

Request To Revise Proposed Costs of Compliance

Air Wisconsin Airlines states that the Costs of Compliance section of the NPRM indicates only the number of affected airplanes and does not take into consideration that there are two units installed on each airplane, making it a total of 1,304 affected components.

From these statements we infer that Air Wisconsin Airlines is requesting that we revise the Costs of Compliance section of the AD to include the actual number of affected valves. We agree with Air Wisconsin Airlines that the Costs of Compliance needs to be revised to include the cost for both the selector valve of the NLG and the door selector valve. We have revised the cost of parts to $80 to reflect 2 valves per product ($40 per valve). For clarification, the term "affected product" in the Costs of Compliance section of this AD refers to the affected number of airplanes of U.S. registry.

Request for Credit for Compliance With Bombardier Service Bulletin 601R–32–090

Air Wisconsin Airlines states that the problem of the door selector valves of the NLG having their end caps incorrectly lock-wired and/or incorrectly torqued during assembly first came to its attention through Bombardier Service Bulletin 601R–32–090. Air Wisconsin Airlines states that Bombardier Service Bulletin 601R–32–104, dated March 3, 2009, was issued to supersede Bombardier Service Bulletin 601R–32–090 to expand the effectivity of the campaign. Air Wisconsin Airlines states that the proposed AD should give credit for those valves that have already complied with Bombardier Service Bulletin 601R–32–090.

We agree with Air Wisconsin Airlines request to receive credit for actions completed in accordance with Bombardier Service Bulletin 601R–32–090, Revision B, dated December 12, 2006; and Revision C, dated March 3, 2009. We have added new paragraph (f)(4) accordingly.

Request To Revise the Applicability

Air Wisconsin Airlines requests that we revise the applicability in paragraph (c) of the proposed AD to "NLG and NLG selector valves, P/N 750006000 (601R75146–1) identified in Bombardier S/B 601R–32–104 dated March 3, 2009 when installed on Bombardier * * * Model CL–600–2B19 * * * airplanes * * *" The commenter provides no justification for this requested change.

We disagree with Air Wisconsin Airlines' request to revise the applicability in paragraph (c) of this AD. We have determined that identifying each airplane by serial number and not by the valve serial number is the best way to control the airworthiness of the fleet and to ensure compliance with the AD.

According to general FAA policy, if an unsafe condition results from the installation of a particular component in only one particular make and model of airplane, the AD should apply to the airplane model, not the component. The reason for this is simple: If the AD applies to the airplane model equipped with the item, operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While we assume that operators can identify the airplane models they operate, they may not be aware of specific items installed on the airplanes. Therefore, specifying the airplane models in the applicability as the subject of the AD prevents an operator's "unknowing failure to comply" with the AD. We recognize that an unsafe condition may exist in an item that is installed in many different airplanes. In that case, we consider it impractical to issue an AD against each airplane; in fact, many times, the exact models and numbers of airplanes on which the item is installed may be unknown. Therefore, in those situations, the AD would apply to the item and usually indicates that the item is known to be "installed on, but not limited to," various airplane models. We have not changed the AD in this regard.

Request To Extend the Compliance Time for the Inspection

Air Wisconsin Airlines requests that we extend the compliance time for the inspection in the NPRM. Air Wisconsin Airlines states that the problem of the door selector valves of the NLG having their end caps incorrectly lock-wired and/or incorrectly torqued during assembly first came to its attention in 2003 through Bombardier Service Bulletin 601R–32–090, which affected 645 units. Air Wisconsin Airlines also states that Bombardier Service Bulletin 601R–32–104, dated March 3, 2009, expanded the effectivity to include 2,126 units. Air Wisconsin Airlines states that it has been working on this issue and it has a substantial number of valves in compliance, but since this issue has been around for almost 7 years without any regulatory influence, the short compliance time of within 1,600 flight hours or 18 months after the

effective date of this AD, whichever occurs first, cannot be justified. Air Wisconsin Airlines states that a longer compliance window should be given considering the number of units affected and the insufficient amount of spares available to ensure compliance within the time provided by a directive.

We disagree with Air Wisconsin Airlines' request to extend the compliance time for the inspection. In developing an appropriate compliance time for the inspection, we considered the safety implications, parts availability, and normal maintenance schedules for the timely accomplishment of the modification. We have determined that the compliance time will ensure an acceptable level of safety and allow the modification to be done during scheduled maintenance intervals for most affected operators. In addition, Bombardier, Inc. recommends a compliance time of 1,600 flight hours or 18 months. We have determined that an adequate supply of valves is available in order for operators to accomplish the required actions within the compliance time specified in this AD. However, operators may apply for an alternative method of compliance (AMOC) in accordance with the provisions specified in paragraph (g)(1) of this AD. We have not changed the AD in this regard.

Requests To Allow Review of Maintenance Records in Lieu of Inspection

Comair, Inc. and Air Wisconsin Airlines request that a review of airplane maintenance records be acceptable in lieu of an inspection to determine serial number and identification markings of the selector valve. Air Wisconsin Airlines states that a records check is sufficient to locate valves requiring inspection.

We agree with the commenters' request that a review of airplane maintenance records is acceptable for determining the serial number and identification markings of the selector valve. We have changed paragraph (f)(1) of this AD to allow a review of maintenance records in lieu of the inspection required by that paragraph.

Request To Clarify Paragraph (f)(2) of the NPRM

Comair, Inc. proposes revised wording for paragraph (f)(2) of the NPRM. The suggested wording clarifies that either the selector valve of the NLG or the door selector valve could have certain serial numbers or identified markings since paragraph (f)(2) identifies both valves.

We agree with Comair, Inc. that the suggested wording is more accurate. We have revised paragraph (f)(2) of this AD as suggested.

Request To Remove Compliance Time of Before Further Flight From Paragraph (f)(3) of the NPRM

Comair, Inc. and Air Wisconsin Airlines request that the compliance time of, "before further flight," be removed from paragraph (f)(3) of the NPRM.

Air Wisconsin Airlines states that the compliance time of "before further flight" specified in paragraph (f)(3) of the NPRM is not in Canadian Airworthiness Directive CF–2009–19, dated April 29, 2009, or in any of the service information listed in that Canadian AD. Air Wisconsin Airlines also states that there does not appear to be enough time and available spare parts in order to do the inspections, remove all the affected serial numbers which fail the test, and send them to the vendor for repair.

Comair, Inc. states that a compliance time of "before further flight" seems contrary or restrictive when the actions specified in paragraph (f)(1) of the NPRM are done. Comair Inc. states that it has already performed a records review and determined which valves have a serial number range specified in Bombardier Service Bulletin 601R–32–104, dated March 3, 2009, and which valves do not have a suffix "T" or "SB750006000–1" marking, as documented on FAA Form 8130–3. Comair, Inc. also states that a compliance time of "before further flight" would require it to ground its airplanes on the effective date of the final rule because it has already determined which valves require action.

We partially agree with the commenters. We agree that there could be a misunderstanding in reading this AD based on the understanding that paragraph (f)(3) of this AD is a stand-alone paragraph. However, we disagree with Comair Inc.'s statement that the compliance time of "before further flight" would require Comair Inc. to ground its airplanes. The intent of this AD is to permit operators to do the identification check within the specified compliance time of "within 1,600 flight hours or 18 months after the effective date of this AD, whichever occurs first." We have revised paragraph (f)(3) of this AD for clarity. In addition, operators may apply for an AMOC in accordance with the provisions specified in paragraph (g)(1) of this AD.

Request To Eliminate Ink Stamping of the Valve

Air Wisconsin Airlines states that the requirement in Tactair Service Bulletin SB750006000–1, Revision E, dated July 31, 2008 (which was referred to in Bombardier Service Bulletin 601R–32–104, dated March 3, 2009, as an additional source of guidance), includes an instruction to ink stamp the service bulletin number on the valve. Air Wisconsin states that this action does not provide an added level of safety, and that this would only lead to confusion, and a meaningless issue of non-compliance should the marking ever become eradicated. Air Wisconsin also states that it is unnecessary to mark the valve.

From these statements, we infer that Air Wisconsin Airlines is requesting that we revise the AD to eliminate unnecessary part markings. We disagree. Valves that are not inked-stamped must be inspected to fulfill the requirements of this AD. An ink-stamped valve demonstrates that the valve has been inspected and modified. We have not made changes to this AD in this regard.

Explanation of Change Made To This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 652 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. Required parts will cost about $80 per product (2 valves per product/$40 per valve). Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $107,580, or $165 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–11 Bombardier, Inc.: Amendment 39–16471. Docket No. FAA–2009–1229; Directorate Identifier 2009–NM–106–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 and subsequent; certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

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

A specific batch of nose landing gear (NLG) and NLG door selector valves, part number (P/N) 601R75146–1 (Kaiser Fluid Technologies P/N 750006000), may have had their end caps incorrectly lock-wired and/or incorrectly torqued during assembly. This condition can lead to the end cap backing off, with consequent damage to a seal and internal leakage within the valve. Subsequently, if electrical power is transferred or removed from the aircraft before the NLG safety pin is installed, any pressure, including residual pressure, in the No. 3 hydraulic system can result in an uncommanded NLG retraction and/or uncommanded opening of the NLG doors. There have been six cases reported on CL[-]600–2B19 aircraft, one of which resulted in the collapse of the NLG at the departure gate.

This [Canadian] directive mandates [an inspection of the NLG and NLG selector valves to determine the serial number and marking of the part and] a check [to determine the torque value and correct lockwire installation] of the [affected] NLG and NLG door selector valves installed on all aircraft in the Applicability section * * *. Depending on the results, replacement, rework and/or additional identification of the valves may be required.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 1,600 flight hours or 18 months after the effective date of this AD, whichever occurs first: Do an inspection to determine the serial number and identification markings on the selector valve of the NLG and the door selector valve of the NLG, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–104, dated March 3, 2009. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number and identification markings of the selector valve and the door selector valve can be conclusively determined from that review.

(2) For any airplane having either the selector valve of the NLG or the door selector valve of the NLG that have a serial number outside the range 0001 through 2126 inclusive, suffix "T" identification, or "SB750006000–1" marking, no further action is required for that valve.

(3) If, during any inspection required by paragraph (f)(1) of this AD, any selector valve of the NLG or any door selector valve of the NLG is found that does not have any serial number or identification marking specified in paragraph (f)(2) of this AD: Before further flight after doing the inspection required by paragraph (f)(1) of this AD, inspect to determine the torque value and correct lockwire installation of the valve, and modify (replace, rework, or re-identify) the valve, as applicable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R–32–104, dated March 3, 2009.

(4) For airplanes having part number (P/N) 601R75146–1 (Tactair P/N 750006000), serial

number 001 thru 0767: Modification of the valve accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 601R–32–090, Revision B, dated December 12, 2006; and Bombardier Service Bulletin Revision C, dated March 3, 2009; are considered acceptable for compliance with the requirements of this AD for that valve.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, 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: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7300; fax (516) 794–5531. 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

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–19, dated April 29, 2009; and Bombardier Service Bulletin 601R–32–104, dated March 3, 2009; for related information.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 601R–32–104, dated March 3, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on September 29, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25458 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0734 Directorate Identifier 2010–CE–036–AD; Amendment 39–16474; AD 2010–21–14]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 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) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Due to a manufacturing error, some rivets, required by drawings, were not installed in the joints between two ceiling beams and the rear pressurized bulkhead.

If left uncorrected, long term fatigue stress could locally weaken the structure, compromising the fuselage structural integrity.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 18, 2010.

On November 18, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090.

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 July 23, 2010 (75 FR 43105). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Due to a manufacturing error, some rivets, required by drawings, were not installed in the joints between two ceiling beams and the rear pressurized bulkhead.

If left uncorrected, long term fatigue stress could locally weaken the structure, compromising the fuselage structural integrity.

This AD requires the accomplishment of Piaggio Aero Industries (PAI) Service Bulletin (SB) 80–0268 original issue, which contains instructions to rework the affected area, thus restoring the fuselage design strength as well as the fatigue specifications of the structure.

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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 6 products of U.S. registry. We also estimate that it will take about 30 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $100 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $15,900 or $2,650 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 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 Management Facility 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–14 PIAGGIO AERO INDUSTRIES S.p.A: Amendment 39–16474; Docket No. FAA–2010–0734; Directorate Identifier 2010–CE–036–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 airplanes, serial numbers 1166 through 1175, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 53: Fuselage.

Reason

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

Due to a manufacturing error, some rivets, required by drawings, were not installed in the joints between two ceiling beams and the rear pressurized bulkhead.

If left uncorrected, long term fatigue stress could locally weaken the structure, compromising the fuselage structural integrity.

This AD requires the accomplishment of Piaggio Aero Industries (PAI) Service Bulletin (SB) 80–0268 original issue, which contains instructions to rework the affected area, thus restoring the fuselage design strength as well as the fatigue specifications of the structure.

Actions and Compliance

(f) Unless already done, within 200 hours time-in-service (TIS) after November 18, 2010 (the effective date of this AD), replace the rivets of the joint brackets on the right-hand and left-hand beam with "Hi-Lok" fasteners, following the accomplishment instructions of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0268, REV. 0, dated December 18, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090; e-mail: *sarjapur.nagarajan@faa.gov*. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2010–0126, dated June 23, 2010; and PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0268, REV. 0, dated December 18, 2008, for related information.

Material Incorporated by Reference

(i) You must use PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0268, REV. 0, dated December 18, 2008, to do the actions

required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.a., Via Cibrario, 4–16154 Genoa, Italy; phone: +39 010 6481 353; fax: +39 010 6481 881; e-mail: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD 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.*

Issued in Kansas City, Missouri, on September 30, 2010.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25284 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0737; Directorate Identifier 2010–CE–037–AD; Amendment 39–16468; AD 2010–21–08]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A. Model PIAGGIO P–180 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) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Some cases of failure of engine oil dipsticks, installed on Pratt & Whitney Canada (P&WC) PT6A66 and PT6A66B engines, were detected on P.180 aeroplanes; such failures, due to moisture penetration into the dipstick and subsequent corrosion, can cause incorrect reading of the engine oil low level on the Refuel/Ground Test Panel.

If left uncorrected, this situation could lead to in-flight engine failure(s). We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 18, 2010.

On November 18, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *fax:* (816) 329–4090.

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 July 23, 2010 (75 FR 43095). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Some cases of failure of engine oil dipsticks, installed on Pratt & Whitney Canada (P&WC) PT6A66 and PT6A66B engines, were detected on P.180 aeroplanes; such failures, due to moisture penetration into the dipstick and subsequent corrosion, can cause incorrect reading of the engine oil low level on the Refuel/Ground Test Panel.

If left uncorrected, this situation could lead to in-flight engine failure(s).

This AD requires:

(1) Repetitive visual checks of the engine oil levels to prevent an undetected low level condition;

(2) Repetitive inspections of the oil dipsticks to detect faulty units;

(3) Replacement of faulty oil dipsticks or visual checks of the oil level at reduced not to exceed intervals, until replacement of faulty units.

The engine TC Holder is currently developing a modification that will address the unsafe condition identified in this AD; once such modification is developed, approved and available, further mandatory actions might be considered.

This Correction is issued to amend the AD number heading: It was PAD, it is AD.

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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 99 products of U.S. registry. We also estimate that it will take about 2.5 work-hours 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 $21,038 or $212.50 per product.

In addition, we estimate that any necessary follow-on actions would take about 1 work-hour and require parts costing $9,000, for a cost of $9,085 per product. We have no way of determining the number of products that may need these actions.

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 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 Management Facility 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–08 PIAGGIO AERO INDUSTRIES S.p.A.: Amendment 39–16468; Docket No. FAA–2010–0737; Directorate Identifier 2010–CE–037–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to PIAGGIO AERO INDUSTRIES S.p.A. Model PIAGGIO P–180 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 79: Engine Oil.

Reason

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

Some cases of failure of engine oil dipsticks, installed on Pratt & Whitney Canada (P&WC) PT6A66 and PT6A66B engines, were detected on P.180 aeroplanes; such failures, due to moisture penetration into the dipstick and subsequent corrosion, can cause incorrect reading of the engine oil low level on the Refuel/Ground Test Panel.

If left uncorrected, this situation could lead to in-flight engine failure(s).

This AD requires:

(1) Repetitive visual checks of the engine oil levels to prevent an undetected low level condition;

(2) Repetitive inspections of the oil dipsticks to detect faulty units;

(3) Replacement of faulty oil dipsticks or visual checks of the oil level at reduced not to exceed intervals, until replacement of faulty units.

The engine TC Holder is currently developing a modification that will address the unsafe condition identified in this AD; once such modification is developed, approved and available, further mandatory actions might be considered.

This Correction is issued to amend the AD number heading: It was PAD, it is AD.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within one month after November 18, 2010 (the effective date of this AD) or within 25 hours time-in-service (TIS) after November 18, 2010 (the effective date of this AD), whichever occurs first, and repetitively thereafter at intervals not to exceed one month or 25 hours TIS, whichever occurs first, do the following in both engines:

(i) Visually check the oil level following the Accomplishment Instructions, Part A, of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0287, Rev. N. 1, dated March 24, 2010; and

(ii) Do a functional check and inspection of the dipstick following the Accomplishment Instructions, Part B and C, of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0287, Rev. N. 1, dated March 24, 2010.

(2) If, as determined by the inspection in paragraph (f)(1)(ii) of this AD, the installed dipsticks are compliant with P&WC Service Bulletin no. 14383, the repetitive inspections required in paragraph (f)(1) of this AD may be done at intervals not to exceed one month or 50 hours TIS, whichever occurs first.

(3) If a failed dipstick is found during any functional check required in paragraph (f)(1)(ii) of this AD, do one of the following;

(i) If a replacement dipstick is available, replace it before further flight; or

(ii) If a replacement dipstick is not available, the failed dipstick may be reinstalled, but, until replacement, the oil level check specified in paragraph (f)(1)(i) of this AD must be repetitively done in the affected engine within 5 hours TIS from the last check. The repetitive oil level check interval may be extended to 10 hours TIS based on oil consumption in accordance with the Accomplishment Instructions, Part B, of PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0287, Rev. N. 1, dated March 24, 2010.

(4) Replacement of the oil level dipstick does not terminate the repetitive check requirements of paragraph (f)(1) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, 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: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2010 0123,

dated June 22, 2010; and PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0287, Rev. N. 1, dated March 24, 2010, for related information.

Material Incorporated by Reference

(i) You must use PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0287, Rev. N. 1, dated March 24, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.A., Via Cibrario, 4–16154 Genoa, Italy; *phone:* +39 010 6481 353; *fax:* +39 010 6481 881; *e-mail: tech.support@piaggioaero.it;* Internet: *http://www.piaggioaero.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD 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.*

Issued in Kansas City, Missouri, on September 29, 2010.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25217 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0736; Directorate Identifier 2010–CE–035–AD; Amendment 39–16469; AD 2010–21–09]

RIN 2120–AA64

Airworthiness Directives; PIAGGIO AERO INDUSTRIES S.p.A Model PIAGGIO P–180 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) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A damaged fuel heater caused a fuel leakage in the engine nacelle; investigation revealed that the damage to the fuel heater was due to chafing with an oil cooling system hose.

Piaggio Aero Industries (PAI) issued Service Bulletin (SB) 80–0175, which was applicable to all aeroplanes and contained instructions for a repetitive inspection of the affected parts and, if necessary, their replacement and/or for the repositioning of oil/fuel tubing if minimum clearances were not found.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective November 18, 2010.

On November 18, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at 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: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4145; *fax:* (816) 329–4090.

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 July 23, 2010 (75 FR 43101). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A damaged fuel heater caused a fuel leakage in the engine nacelle; investigation revealed that the damage to the fuel heater was due to chafing with an oil cooling system hose.

Piaggio Aero Industries (PAI) issued Service Bulletin (SB) 80–0175, which was applicable to all aeroplanes and contained instructions for a repetitive inspection of the affected parts and, if necessary, their replacement and/or for the repositioning of oil/fuel tubing if minimum clearances were not found.

ENAC of Italy issued PA 2002–335 to require the accomplishment of these corrective actions.

Later on, PAI introduced a new Hose Assembly (P/N 80–337284–001), which allows better clearances and removes the problem of potential interference. PAI issued SB 80–0175 Revision 1, limiting the applicability to aeroplanes with the old P/N installed only and giving instructions for the replacement with the new Hose Assembly P/N.

This new AD, which supersedes ENAC Italy PA 2002–335, is issued to grant the revised applicability and to include an optional terminating action, which consists in replacing the Hose Assembly P/N 80–337276–001 with the new P/N 80–337284–001.

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 considered the comment received.

Request to Clarify Requirement to Replace Both Flexible Hoses to Terminate Repetitive Inspections

Carlo Cardu of PIAGGIO AERO INDUSTRIES S.p.A states that both the left-hand and right-hand hose assembly, part number (P/N) 80–337276–001, must be replaced at the same time with a new hose assembly, P/N 80–337284–001, in order to terminate the repetitive inspection requirement. This requirement is specified in PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0175, Rev. N. 1, dated May 14, 2010.

The commenter requests clarification of this requirement in the final rule AD action.

We agree with the commenter. Adding this clarification will ensure that both hose assemblies are replaced at the same time and will clarify the intent of the AD issued by the foreign airworthiness authority and the manufacturer's service bulletin.

We are changing the final rule AD action based on this comment.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

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 FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 99 products of U.S. registry. We also estimate that it will take about 5 work-hours 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 on U.S. operators to be $42,075, or $425 per product.

In addition, we estimate that any necessary follow-on actions will take about 32 work-hours and require parts costing $3,700, for a cost of $6,420 per product. We have no way of determining the number of products that may need these actions.

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 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 Management Facility 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 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–09 PIAGGIO AERO INDUSTRIES S.p.A: Amendment 39–16469; Docket No. FAA–2010–0736; Directorate Identifier 2010–CE–035–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to PIAGGIO AERO INDUSTRIES S.p.A. Model PIAGGIO P–180 airplanes, all serial numbers, that are:

(i) Equipped with hose assembly, part number (P/N) 80–337276–001; and

(ii) Certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 79: Engine Oil.

Reason

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

A damaged fuel heater caused a fuel leakage in the engine nacelle; investigation revealed that the damage to the fuel heater was due to chafing with an oil cooling system hose.

Piaggio Aero Industries (PAI) issued Service Bulletin (SB) 80–0175, which was applicable to all aeroplanes and contained instructions for a repetitive inspection of the affected parts and, if necessary, their replacement and/or for the repositioning of oil/fuel tubing if minimum clearances were not found.

ENAC of Italy issued PA 2002–335 to require the accomplishment of these corrective actions.

Later on, PAI introduced a new Hose Assembly (P/N 80–337284–001), which allows better clearances and removes the problem of potential interference. PAI issued SB 80–0175 Revision 1, limiting the applicability to aeroplanes with the old P/N installed only and giving instructions for the replacement with the new Hose Assembly P/N.

This new AD, which supersedes ENAC Italy PA 2002–335, is issued to grant the revised applicability and to include an optional terminating action, which consists in replacing the Hose Assembly P/N 80–337276–001 with the new P/N 80–337284–001.

Actions and Compliance

(f) Unless already done, do the following actions:

(1) Within the next 150 hours time-in-service (TIS) after the November 18, 2010 (the effective date of this AD) and repetitively thereafter at intervals not to exceed 165 hours TIS after the last inspection, inspect the left-hand (LH) and the right-hand (RH) engine mounted fuel heater for wear damage and minimum clearance. Do the inspections following Part A of the Accomplishment Instructions in PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0175, Rev. N. 1, dated May 14, 2010.

(2) If any wear damage to either the LH or the RH fuel heater or to the oil cooling system hose is detected during any inspection required in paragraph (f)(1) of this AD, before further flight after the inspection, replace both hose assembly P/Ns 80–337276–001 with a new hose assembly P/N 80–337284–001. Do the replacements following Part B of the Accomplishment Instructions in PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0175, Rev. N. 1, dated May 14, 2010. Installing both the LH and the RH hose assembly P/N 80–337284–001 terminates the repetitive inspections required in paragraph (f)(1) of this AD.

(3) If no wear damage to the fuel heater or to the oil cooling system hose is detected, but insufficient clearance is found during any inspection required in paragraph (f)(1) of this AD, within the next 660 hours TIS after the inspection, replace the LH and RH hose assembly P/N 80–337276–001 with a new hose assembly P/N 80–337284–001. Do the replacements following Part B of the Accomplishment Instructions in PIAGGIO

AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0175, Rev. N. 1, dated May 14, 2010. Installing both the LH and the RH hose assembly P/N 80–337284–001 terminates the repetitive inspections required in paragraph (f)(1) of this AD.

(4) You may terminate the repetitive inspections required in paragraph (f)(1) of this AD by replacing both the LH and the RH hose assembly P/Ns 80–337276–001 with a new hose assembly P/N 80–337284–001 at any time after the initial inspection required in paragraph (f)(1) of this AD, as long as no wear damage to the fuel heater or to the oil cooling system hose is detected and sufficient clearance is found.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, 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: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(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

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2010–0125, dated June 23, 2010; and PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0175, Rev. N. 1, dated May 14, 2010, for related information.

Material Incorporated by Reference

(i) You must use PIAGGIO AERO INDUSTRIES S.p.A. Service Bulletin (Mandatory) N.: 80–0175, Rev. N. 1, dated May 14, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Piaggio Aero Industries S.p.a., Via Cibrario, 4–16154 Genoa, Italy; phone: +39 010 6481 353; fax: +39 010 6481 881; e-mail: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD 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.*

Issued in Kansas City, Missouri, on September 29, 2010.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25215 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0676; Directorate Identifier 2010–NM–095–AD; Amendment 39–16479; AD 2010–21–19]

RIN 2120–AA64

Airworthiness Directives; Learjet Inc. Model 45 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires replacing aluminum fire extinguisher discharge tubes with new, improved tubes; checking the fire extinguisher container for certain serial numbers; replacing fire extinguisher containers that have affected serial numbers; inspecting the pressure indicator on certain fire extinguisher containers for discrepancies; and performing corrective action if necessary. This AD was prompted by a report of accidental discharge of a fire extinguisher container and damage to an aluminum discharge tube. Investigation revealed that following the discharge an inaccurate pressure indication, due to the indicator dial being incorrectly staked, showed that the container was fully charged. We are issuing this AD to prevent inaccurate pressure readings and subsequent damage to the discharge tubes during operation, which could result in failure of the fire extinguisher system and an uncontained fire in an emergency situation.

DATES: This AD is effective November 18, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of November 18, 2010.

ADDRESSES: For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.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 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: James Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107; e-mail *james.galstad@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to the specified products. That NPRM was published in the **Federal Register** on July 7, 2010 (75 FR 38941). That NPRM proposed to require replacing aluminum fire extinguisher discharge tubes with new, improved tubes; checking the fire extinguisher container for certain serial numbers; replacing fire extinguisher containers that have affected serial

numbers; inspecting the pressure indicator on certain fire extinguisher containers for discrepancies; and performing corrective action if necessary.

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 relevant data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

We estimate that this AD affects 322 airplanes of U.S. registry. We also estimate that it will take 5 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Required parts cost is minimal. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $136,850, or $425 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

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–21–19 Learjet Inc: Amendment 39–16479; Docket No. FAA–2010–0676; Directorate Identifier 2010–NM–095–AD.

Effective Date

(a) This AD is effective November 18, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Inc. Model 45 airplanes, certificated in any category; as identified in Bombardier Service Bulletins 40–26–05 and 45–26–9, both Revision 2, both dated May 4, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 26: Fire protection.

Unsafe Condition

(e) This AD results from a report of accidental discharge of a fire extinguisher container and damage to an aluminum discharge tube. Investigation revealed that following the discharge an inaccurate pressure indication, due to the indicator dial being incorrectly staked, showed that the container was fully charged. The Federal Aviation Administration is issuing this AD to prevent inaccurate pressure readings and subsequent damage to the discharge tubes during operation, which could result in failure of the fire extinguisher system and an uncontained fire in an emergency situation.

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.

Replacement, Check, Inspection, Corrective Action

(g) Within 12 months after the effective date of this AD: Replace the aluminum fire extinguisher discharge tubes with new, improved stainless steel tubes; check the fire extinguisher container for any serial number specified in Table 1 of Bombardier Service Bulletin 40–26–05 or 45–26–9, both Revision 2, both dated May 4, 2009, as applicable; replace any containers that have affected serial numbers, do a weight check of all containers, including the replacement container, if applicable; and inspect the pressure indicator on the containers for discrepancies; by doing all applicable actions in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 40–26–05 or 45–26–9, both Revision 2, both dated May 4, 2009; as applicable. If any discrepancy is found, replace the container before further flight in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 40–26–05 or 45–26–9, both Revision 2, both dated May 4, 2009; as applicable.

(h) Actions done before the effective date of this AD in accordance with the applicable service information listed in Table 1 of this AD are acceptable for compliance with the corresponding requirements in paragraph (g) of this AD.

TABLE 1—CREDIT FOR ACTIONS ACCOMPLISHED IN ACCORDANCE WITH PREVIOUS SERVICE INFORMATION

Affected Serial Numbers—	Bombardier Service Bulletin—	Revision—	Dated—
For Model 45 airplanes having serial numbers 2001 through 2114, inclusive	40–26–05	Basic Issue	November 24, 2008.
For Model 45 airplanes having serial numbers 2001 through 2114, inclusive	40–26–05	1	December 22, 2008.
For Model 45 airplanes having serial numbers 006 through 383, inclusive	45–26–9	Basic Issue	November 24, 2008.

TABLE 1—CREDIT FOR ACTIONS ACCOMPLISHED IN ACCORDANCE WITH PREVIOUS SERVICE INFORMATION—Continued

Affected Serial Numbers—	Bombardier Service Bulletin—	Revision—	Dated—
For Model 45 airplanes having serial numbers 006 through 383, inclusive ...	45–26–9	1	December 22, 2008.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Wichita 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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

Related Information

(j) For more information about this AD, contact James Galstad, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4107; e-mail *james.galstad@faa.gov*.

Material Incorporated by Reference

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

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Bombardier Service Bulletin 40–26–05	2	May 4, 2009.
Bombardier Service Bulletin 45–26–9	2	May 4, 2009.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 2 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942; telephone 316–946–2000; fax 316–946–2220; e-mail *ac.ict@aero.bombardier.com;* Internet *http://www.bombardier.com*.

(3) You may review copies of the 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.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on October 5, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–25599 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0634; Airspace Docket No. 10–AWP–8]

Establishment of Class E Airspace; Clifton/Morenci, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action will establish Class E airspace at Greenlee County Airport, Clifton/Morenci, AZ, to accommodate aircraft using new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAPs) at Greenlee County Airport. This will improve the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective date, 0901 UTC, January 13, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

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

SUPPLEMENTARY INFORMATION:

History

On July 29, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish controlled airspace at Clifton/Morenci, AZ (75 FR 44725). 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 Part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

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

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace at Greenlee County Airport, Clifton/Morenci, AZ.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the 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 or more above the surface of the earth.

* * * * *

AWP AZ E5 Clifton/Morenci, AZ [New]

Greenlee County Airport, AZ
(Lat. 32°57′25″ N., long. 109°12′40″ W.)

That airspace extending from 700 feet above the surface within a 6.5-mile radius of Greenlee County Airport.

Issued in Seattle, Washington, on October 4, 2010.

John Warner,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2010–25835 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1200

[Docket No. CPSC–2010–0029]

Interpretation of "Children's Product"

AGENCY: Consumer Product Safety Commission.

ACTION: Final interpretative rule.

SUMMARY: The Consumer Product Safety Commission ("CPSC," "Commission," or "we") is issuing a final interpretative rule on the term "children's product" as used in the Consumer Product Safety Improvement Act of 2008 ("CPSIA"), Public Law 110–314. The final interpretative rule provides additional guidance on the factors that are considered when evaluating what is a children's product.[1]

DATES: *Effective Date:* This rule is effective October 14, 2010.

FOR FURTHER INFORMATION CONTACT: Jonathan D. Midgett, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814, telephone (301) 504–7692, e-mail *jmidgett@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Section 235(a) of the CPSIA amended section 3(a)(2) the Consumer Product Safety Act ("CPSA") by creating a new definition of "children's product." 15 U.S.C. 2052(a)(2). "Children's product" is defined as "a consumer product designed or intended primarily for children 12 years of age or younger." Several CPSIA provisions use the term "children's product." Section 101(a) of the CPSIA provides that, as of August 14, 2009, children's products may not contain more than 300 parts per million (ppm) of lead. Section 102 of the CPSIA requires third party testing of certain children's products, and section 103 of the CPSIA requires tracking labels for children's products.

The statutory definition of "children's product" also specifies certain factors that are to be taken into consideration when making a determination about "whether a consumer product is primarily intended for a child 12 years of age or younger." These factors are:

- A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.
- Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.
- Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.
- The Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

B. Discussion of Comments to the Proposed Interpretative Rule and Changes to the Final Interpretative Rule

In the **Federal Register** of April 20, 2010 (75 FR 20533), the Commission published a proposed interpretative rule to help interested parties understand how the Commission will determine whether a particular consumer product is a "children's product." By this rule, the Commission intends to clarify its interpretation of the statutory requirements and provide guidance on sections 101, 102, and 103 of the CPSIA with regard to children's products. The language in the preamble of this rule and the preamble of the proposed rule (75 FR at 20533) (to the extent the proposed rule was not altered by the final rule) may be consulted in determining its administrative construction and meaning. The Commission recognizes that the determination of whether a product meets the definition of a children's product depends on factual information that may be unique to each product and, therefore, would need to be made on a case-by-case basis. Given the factual nature of the inquiry, this rule is intended to give interested parties a better understanding of our approach in evaluating children's products. This document does not impose any additional requirements beyond those in the CPSIA, but informs the public of the Commission's interpretation of the term

[1] The Commission voted 3–2 to publish this final interpretative rule, with changes, in the **Federal Register**. Chairman Inez M. Tenenbaum, Commissioners Thomas Moore and Robert Adler voted to publish the final interpretative rule with changes. Commissioners Nancy Nord and Anne Northup voted against publication of the final interpretative rule. All of the Commissioners issued statements. The web address for Commissioners' statements is: *http://www.cpsc.gov/pr/statements.html.*

"children's product." The proposed interpretative rule would create a new section in the CFR interpreting the definition of children's product and elaborating on the accompanying statutory factors.

The Commission notes that while all four factors are considered, certain elements of the factors are common to many children's products and cut across numerous product categories. These elements are decorations or embellishments with childish themes that invite use by a child 12 years of age or younger, sizing a product for a child, or marketing a product in a way designed to make it appeal primarily to children.

The Commission received numerous comments from individuals and groups, including consumers, consumer organizations, manufacturers, trade associations, and testing laboratories. Several commenters supported the proposed rule; other commenters sought to clarify, expand, or limit the scope of the rule.

We initially proposed this section under Chapter II of Title 16, Part 1500 of the Federal Hazardous Substances Act ("FHSA"). However, because the definition of children's product amends section 3(a)(2) of the Consumer Product Safety Act ("CPSA"), on our own initiative, we have renumbered the final rule to become a new Part 1200, Definitions, under Subchapter B—Consumer Product Safety Act Regulations.

As a result of our decision to place the final rule in a new part 1200, we have, on our own initiative, created a new § 1200.1 to describe the purpose of the new part 1200. Section 1200.1 states that part 1200 is intended to provide guidance on the definition of children's product and the factors considered for making determinations regarding children's products as set forth under 15 U.S.C. 2052(a)(2). Additionally, proposed § 1500.92, "Definition of children's product," is now renumbered as § 1200.2 in the final interpretative rule.

We describe and respond to the comments in part B of this document and also describe the final rule. To make it easier to identify comments and our responses, the word "Comment," in parentheses, will appear before the comment's description, and the word "Response," in parentheses, will appear before our response. We also have numbered each comment to help distinguish among different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value, importance, or the order in which it was received.

1. *Definition of "Children's Product"—§ 1200.2(a)(2) (Formerly § 1500.92(a)(1)).* Proposed § 1500.92(a) would provide that, under section 3(a)(2) of the CPSA, a children's product means a consumer product designed or intended primarily for children 12 years of age or younger. We interpreted the term "designed or intended primarily" to apply to those consumer products mainly for children 12 years old or younger. A determination of whether a product is a "children's product" will be based on consideration of the four specified statutory factors. In addition, because the statutory factors incorporate the concept of "use" by the child in some manner, proposed § 1500.92(a)(1) interpreted "for use" by children 12 years or younger generally to mean that children will physically interact with such products based on the reasonably foreseeable use and misuse of such products.

(Comment 1)—Several commenters state that the definition should be clear that children's products are only those designed or intended by the manufacturer to be primarily for children 12 years of age or younger and that a product falls outside the scope of the definition if the product was designed or intended primarily by the manufacturer for older children or adults. In addition, some commenters request that the Commission limit the scope of the definition by emphasizing that the manufacturer's intent is the key factor for evaluating whether a consumer product is a children's product. According to these commenters, the interpretative rule should make clear that the remaining statutory criteria would be subordinate to statements made by manufacturers about the intended age of the users.

(Response 1)—We disagree that a determination of what is a children's product should be based mainly on the manufacturer's intent. The statute provides that the definition of a "children's product" is a consumer product designed or intended primarily for children 12 years of age or younger. In determining whether a consumer product is primarily intended for a child 12 years of age or younger, section 3(a)(2)(A) through (D) of the CPSA expressly mandates an analysis of four factors that "shall be considered": (1) A statement by the manufacturer about the intended use of the product, including a label on such product if such statement is reasonable; (2) whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger; (3) whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and (4) the Age Determinations Guidelines issued by the Commission staff in September 2002, and any successor to such guidelines. All of these factors will be considered in each case to the extent that they are applicable.

The manufacturer's statement of intent, including labeling, is only one of four factors that we must consider. While we agree that the manufacturer's statement of intent plays an important role in making initial children's product determinations, it is not necessarily determinative, or entitled to greater weight than any other factor. Courts have held that, as a general rule, when a statute requires an agency to consider a factor, the agency must reach "an express and considered conclusion" about the bearing of the factor, but need not give "any specific weight to the factor." *Small Refiner Lead Phase-Down Task Force* v. *EPA,* 705 F.2d 506, 516 (DC Cir. 1983) (quoting *Weyerhaeuser Co.* v. *Costle,* 590 F.2d 1011, 1045 (DC Cir. 1978)). At a minimum, all the statutory factors must be considered when determining whether a particular consumer product is considered to be intended primarily for children 12 years of age or younger, and we will not initially assign any more or less weight to any individual factor.

(Comment 2)—Other commenters state that the proposed definition of children's product should not contain a definition of "for use" by children that is based on "physical interaction" and "foreseeable use and misuse" of such products by children. According to the commenters, the requirement that children physically interact with such products would capture many household products that would not be designed or intended primarily for children 12 years of age or younger.

(Response 2)—We disagree that the interpretation of "for use" would capture general use products that are not primarily intended for use by children. We interpret "for use" generally to mean physical use of a product in order to distinguish products, such as diaper bags that are intended to be used *with* children by the parent or caregiver from products that are intended for use *by* children. Products that are for use by children generally are those with which they will interact or have direct physical contact, such as with the diaper itself. There also can be children's products where the interaction is not direct physical contact, such as a mobile hung over an infant's crib, where the child's interaction with the mobile is to be

entertained, soothed, or transitioned to sleep (to mention a few of the purposes stated in the advertisements for these products).

Contrary to the commenters' assertions, many household products are not primarily intended for use by children, but may be touched by children. Products that are considered general use products, such as televisions, stereo equipment, and appliances, do not become children's products simply because children may have contact with them because the products are not designed or intended primarily for use by children 12 years of age or younger.

When evaluating products, the Commission not only considers the manufacturer's statement of intended use, but the product's reasonably foreseeable use (i.e., what a child using the product may reasonably be expected to do with the product). The question of whether there will be reasonably foreseeable use of a product by a child is a determination that is made initially by the manufacturer. We agree that foreseeable misuse in this context may be difficult for a manufacturer to determine. An analysis of the foreseeable uses should be adequate to make the initial determination as to whether a product is a children's product. We have revised the final rule to reflect these changes and advise readers to disregard the discussion of misuse in the preamble to the proposed rule (75 FR at 20535).

(Comment 3)—A few commenters state that the proposed interpretative rule affects other requirements previously established for toys and children's products. Specifically, the commenters give as an example board/table games, which were identified under the Age Determination Guidelines as being appropriate for children in the 6-year-old range. The commenters assert that the games would have to comply with ASTM F963 (a toy standard that is now a mandatory consumer product safety standard pursuant to section 106 of the CPSIA), applicable FHSA requirements under 16 CFR 1500.50 through 1500.53, lead in surface coatings under 16 CFR 1303, and phthalates requirements of the CPSIA. If the games are general use products, the commenters claim that such products would not be required to comply with the lead in substrate requirements, or the tracking label requirements, or the mandatory third party testing requirements under the CPSIA.

(Response 3)—We recognize that some board games could be treated differently under separate provisions of the CPSIA, the cited FHSA regulations, and ASTM F963. In most places, however, the statutes and regulations can be read consistently. For example, to the extent that toys or other articles are subject to small parts testing because they are intended for use by children under 3 years of age, it is reasonable to conclude that they are children's products. Likewise, for toys and other articles intended for use by children under 8 years of age that are subject to the use and abuse tests at 16 CFR 1500.50 through 1500.53, and the sharp points and edges tests at 16 CFR 1500.48 through 1500.49, such products would also logically be considered children's products. We have added the following sentences to clarify this in the rule. The final interpretative rule now states in relevant part:

> Toys and articles that are subject to the small parts regulations at 16 CFR Part 1501 and in ASTM F963, would logically fall within the definition of children's product since they are intended for children 12 years of age or younger. Toys and other articles intended for children up to 96 months (8 years old) that are subject to the requirements at 16 CFR 1500.48 through 1500.49 and 16 CFR 1500.50 through 1500.53 would similarly fall within the definition of children's product given their age grading for these other regulations. Therefore, a manufacturer could reasonably conclude on the basis of the age grading for these other regulations that its product also must comply with all requirements applicable to children's products including, but not limited to, those under the Federal Hazardous Substances Act, ASTM F963, "Standard Consumer Safety Specification for Toy Safety," and the Consumer Product Safety Improvement Act of 2008.

We discuss children ages 9 through 12 in the comments and responses to proposed § 1500.92(c)(1) (now renumbered as § 1200.2(c)(1) in the final rule).

(Comment 4)—One commenter states that the definition of children's products should include pet foods. Another commenter states that adult absorbent care products should be distinguished from children's diapers.

(Response 4)—Pet foods and adult absorbent products are outside the scope of this interpretative rule because these products are regulated under the Federal Food, Drug, and Cosmetic Act ("FFDCA"). 21 U.S.C. 201, *et seq.* Pet food falls within the definition of "food" at section 201(f) of the FFDCA, which defines "food," in part, as "articles used for food or drink for man or other animals."

As for diapers, although children's diapers are considered children's products, adult absorbent products are devices as defined at section 201(h) of the FFDCA, and the Food and Drug Administration classifies a "protective garment for incontinence" as a class I device (*see* 21 CFR 876.5920).

2. *Definition of* "*General Use Product*"—*§ 1200.2(b)(1) (Formerly § 1500.92(b)(1)).* Proposed § 1500.92(b)(1) would define a general use product to mean a consumer product that is not designed or intended primarily for use by children 12 years old or younger. The proposal also would interpret a general use product as a consumer product "mainly for consumers older than age 12" and would explain that some products may be designed or intended for consumers of all ages, including children 12 years old or younger, but are intended mainly for consumers older than 12 years of age. The proposal would provide that, "[e]xamples of general use products may include products with which a child would not likely interact, or products with which consumers older than 12 would be as likely, or more likely to interact. Products used by children 12 years of age or younger that have a declining appeal for teenagers are likely to be considered children's products."

(Comment 5)—Several commenters would have us make explicit that, if a product is as likely or more likely to be used by a child older than 12 years of age than by a child 12 years of age or younger, the product may not be considered a children's product. Other commenters state that the terms "as likely" and "just as appealing" (which appeared in the preamble to the proposed rule and not in the codified text itself (*see* 75 FR at 20534)) to compare younger and older children adds subjectivity and uncertainty to the determination process. These commenters believe that, if a determination is not clear cut, the Commission should err in protecting child safety and health. In addition, the commenters state that products having intrinsic play value for young children should be considered children's products.

(Response 5)—A children's product is a consumer product designed or intended primarily for children 12 years of age or younger. General use products are those consumer products designed or intended primarily for consumers older than age 12. As we stated in the preamble to the proposed rule, "if an older child or adult is as likely, or more likely to interact with the [product] than a child, such a [product] would not be a product designed or intended primarily for children 12 years of age or younger, and thus, would not be considered a "children's product." *See* 75 FR at 20534. We will consider all four of the statutory factors to determine

if a product is primarily intended for children 12 years of age or younger, always keeping in mind that one of the Commission's most important mandates is to protect children's health and safety.

We disagree with the comment that any product that has intrinsic play value for young children would automatically be considered a children's product. Young children often find intrinsic play value in a number of general use products, such as pots and pans or keys, but they do not become children's products simply because children may play with them. The Commission has other statutory authorities to address nonchildren's products that may pose a risk to children.

3. *Other products specifically not intended for use by children 12 years of age or younger—§ 1200.2(b)(2) (Formerly § 1500.92(b)(2)).* Proposed § 1500.92(b)(2) would state that products, such as cigarette lighters, candles, and fireworks, which the Commission has traditionally warned adults to keep away from children, are not subject to the CPSIA's lead limits, tracking label requirement, and third-party testing and certification provisions. Similarly, this section would provide that products that incorporate performance requirements for child resistance are not children's products because they are designed specifically to ensure that children cannot access the contents. This would include products such as portable gasoline containers and special packaging under the Poison Prevention Packaging Act.

We did not receive any comment on this provision. Therefore, other than renumbering the provision to be § 1200.2(b)(2), we have finalized this section without change.

4. *Factors Considered—§ 1200.2(c) (Formerly § 1500.92(c)).* Proposed § 1500.92(c) would set forth the statutory factors that must be considered to determine whether a consumer product is primarily intended for a child 12 years of age or younger.

We did not receive any specific comment on this provision. Therefore, other than renumbering the provision to be § 1200.2(c), we have finalized this section with a nonsubstantive change.

5. *Manufacturer's Statement—§ 1200.2(c)(1) (Formerly § 1500.92(c)(1)).* Proposed § 1500.92(c)(1) would explain that a manufacturer's statement about the product's intended use, including the product's labels, should be reasonably consistent with the expected use patterns for a product. This section also would provide that, "[a] manufacturer's statement that the product is not intended for children does not preclude a product from being regulated as a children's product if the primary appeal of the product is to children 12 years of age or younger. Similarly, a label indicating that a product is for ages 10 and up does not necessarily make it a children's product if it is a general use product." The manufacturer's label, in and of itself, is not considered to be determinative.

(Comment 6)—One commenter would revise the interpretative rule to clarify the "gray" area of products designed or intended both for children 9 to 12 years old and for teenagers and older. The commenter states that the manufacturer's statement should refer to ages 9 and up, rather than ages 10 and up.

(Response 6)—We agree that the hardest questions regarding determinations on whether a product is primarily intended for children 12 years of age or younger will often involve this age group. For example, the requirements for the use and abuse test methods and for the sharp points and edges test methods discussed in part B.1 of this document and § 1200.2(a) do not extend past 96 months (8 years of age). The Age Determination Guidelines group 9 to 12-year-olds together because these older children have advanced cognitive and motor skills, as well as the ability to care for their belongings, compared to younger children. Thus, products in this category may have characteristics that are also appropriate for products intended for older children and adults. A number of products intended for this age group (9 and up, 10 and up, 11 and up, and 12 and up) will require further evaluation. However, we have revised the final rule to include ages 9 and up, rather than ages 10 and up to reflect the age groups discussed in the Age Determination Guidelines. The sentences now state, "Similarly, a label indicating that a product is for ages 9 and up does not necessarily make it a children's product if it is a general use product. Such a label may recommend 9 years old as the earliest age for a prospective user, but may or may not indicate the age for which the product is primarily intended."

6. *Packaging, Display, Promotion or Advertising—§ 1200.2(c)(2) (Formerly § 1500.92(c)(2)).* Proposed § 1500.92(c)(2) would restate the statutory factor on whether a product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.

We did not receive any specific comment on this provision. Therefore, other than renumbering the provision to be § 1200.2(c)(2), we have finalized this section without change.

7. *Express or Implied Representations—§ 1200.2(c)(2)(i) (Formerly § 1500.92(c)(2)(i)).* Proposed § 1500.92(c)(2)(i) would explain that, for example, advertising that expressly declares that the product is intended for children 12 years of age or younger will support a determination that a product is a children's product. While, for example, advertising showing children 12 years of age or younger using the product may support a determination that the product is a children's product. The proposal would state that such representations may be found in packaging, text, illustrations and/or photographs depicting consumers using the product, instructions, assembly manuals, or advertising media used to market the product.

We did not receive any specific comment on this provision. Therefore, other than renumbering the provision to be § 1200.2(c)(2)(i), we have finalized this section without change.

8. *Product's Physical Location—§ 1200.2 (c)(2)(ii) (Formerly § 1500.92(c)(2)(ii)).* Proposed § 1500.92(c)(2)(ii) would state that the product's physical location near, or visual association with, children's products may be a factor in making an age determination, but is not determinative.

(Comment 7)—One commenter states that if a store decides to place a youth basketball in a toy shop section, instead of the teen and adult sporting goods section, it does not make it less of a basketball, and the location should not be determinative in the analysis.

(Response 7)—We agree that a product's location, while important, is not determinative. The physical placement of a product in a store may not be known by the manufacturer when an age determination is made, and manufacturers may not have any control over the placement of their products. However, if such marketing information is known, it should be considered in the determination analysis because the physical location of a product in a store is part of the product's marketing. In addition, the Commission may consider the kind of stores to which a product is distributed in determining whether it is designed or primarily intended for children 12 years of age or younger.

(Comment 8)—One commenter states that the packaging, marketing, and placement in a retail store should be the main indication that the product is targeting children 12 years of age and under. The commenter asserts that the

interaction between this factor and the others should be clearly stated.

(Response 8)—While the packaging, marketing, and store placement will be considered, these factors do not necessarily outweigh the other factors that may need to be considered in making an age determination. We will weigh all of the relevant factors. Therefore, other than renumbering the provision to be § 1200.2(c)(2)(ii), we have finalized this section with nonsubstantive changes.

9. *Marketing with Other Products—§ 1200.2(c)(2)(iii) (Formerly § 1500.92(c)(2)(iii)).* Proposed § 1500.92(c)(2)(iii) would state that the product's association or marketing in conjunction with nonchildren's products may not be determinative as to whether the product is a children's product. For example, packaging and selling a stuffed animal with a candle would not preclude a determination that the stuffed animal is a children's product since stuffed animals are commonly recognized as being primarily intended for children.

(Comment 9)—One commenter states that stuffed animals sold with adult products should be considered general use items since the manufacturer intended the product for distribution to adults.

(Response 9)—We disagree with the commenter. Packaging of toys or other articles appropriate for children along with adult products occurs occasionally. Therefore, we will not assume that all products in a copackaged product are general use products if the copackaged product contains toys or other articles that are appealing to and more likely to be used by children.

Therefore, other than renumbering the provision to be § 1200.2(c)(2)(iii), we have finalized this section without change.

10. *Commonly Recognized by Consumers—§ 1200.2(c)(3) (Formerly § 1500.92(c)(3)).* Proposed § 1500.92(c)(3) would state that the consumer perception of the product's use by children, including its reasonably foreseeable use and misuse, will be evaluated. In addition, the proposed interpretative rule would state that sales data, market analyses, focus group testing, and other marketing studies may help support an analysis regarding this factor.

We did not receive any specific comment on this provision. Therefore, other than renumbering the provision to be § 1200.2(c)(3), and removing the reference to "misuse" for the same reasons as discussed in Response 2, we have finalized this section without change.

11. *Additional Features and Characteristics of Children's Products—§ 1200.2(c)(3)(i) (Formerly § 1500.92(c)(3)(i)).* Proposed § 1500.92(c)(3)(i) would list additional considerations that may help distinguish children's products from nonchildren's products. For example, the proposed rule would include considerations such as small sizes that would not be comfortable for the average adult, exaggerated features (large buttons, bright indicators) that simplify the product's use, safety features that are not found on similar products intended for adults, colors commonly associated with childhood (pinks, blues, bright primary colors), decorative motifs commonly associated with childhood (such as animals, insects, small vehicles, alphabets, dolls, clowns, and puppets); and features that do not enhance the product's utility (such as cartoons), but contribute to its attractiveness to children 12 years of age or younger.

We did not receive any specific comment requesting modification of this provision. Therefore, other than renumbering the provision to be § 1200.2(c)(3)(i), we have finalized this section without change.

12. *Principal Use of Product—§ 1200.2(c)(3)(ii) (Formerly § 1500.92(c)(3)(ii)).* Proposed § 1500.92(c)(3)(ii) would state that a product's principal use may help consumers distinguish children's products from nonchildren's products. The proposed interpretative rule would explain that just because an item could be used as a children's product, such as when a child pretends that a broom is a horse, that does not mean the item is a children's product because the broom's principal use is for sweeping.

We did not receive any specific comment on this provision. Therefore, other than renumbering the provision to be § 1200.2(c)(3)(ii), and rephrasing the provision for clarity, we have finalized this section without change.

13. *Cost—§ 1200.2(c)(3)(iii) (Formerly § 1500.92(c)(3)(iii)).* Proposed § 1500.92(c)(3)(iii) would state that the cost of a given product may influence consumer perception regarding the age of intended users.

(Comment 10)—A few commenters state that cost should not be a factor because many products, such as craft products and Halloween products, are low cost, and that this factor does not correlate with whether the products are more likely to be given to children. Another commenter states that we should clarify the consideration of "cost" in determining what is a children's product and include representative monetary frameworks for some categories.

(Response 10)—Although the cost of a product, by itself, is not determinative, the cost of an item can be a consideration. As stated in the preamble of the proposed rule:

> A product's cost may also be considered in evaluating whether a consumer product is primarily intended for use by a child or an adult. The cost of a given product may influence the determination of the age of intended users. Very expensive items are less likely to be given to children 12 years of age or younger, depending on the product. We have not identified a price point where any given product achieves automatic adult status but, in general terms, within a given product category (like models or remote controlled vehicles), products intended for adults cost more than products intended for children because children are often less careful with their belongings than adults and therefore are more likely to be entrusted with less expensive models. *See* 75 FR 20536 (April 20, 2010).

Given the variety of products in the marketplace, we cannot provide monetary frameworks for categories of products and must evaluate products on a case-by-case basis. Therefore, other than renumbering the provision to be § 1200.2(c)(3)(iii), we have finalized this section without change.

14. *Children's Interactions—§ 1200.2(c)(3)(iv) (Formerly § 1500.92(c)(3)(iv)).* Proposed § 1500.92(c)(3)(iv) would explain that products for use in a child's environment by the caregiver, but not for use by the child, would not be considered primarily intended for a child 12 years of age or younger.

(Comment 11)—One commenter disagrees with the Commission's analysis of a child's interaction with certain items discussed under furniture and fixtures and the interaction's effect on whether or not a product was a children's product. The commenter notes that the Commission stated in the proposed rule that "a humidifier may be used in a child's room, but this does not make it for children to use; instead, adult caregivers use the humidifier to modify the air in a child's room." While agreeing that an ordinary household humidifier is a general use product, the commenter states that a humidifier that is composed of colored plastic and shaped like a baby animal with a smile on its face is not equally likely to be purchased for and used by adults and children; the humidifier is designed to appeal primarily to young children and used in a young child's room. The commenter notes that the child's use of the product is indirect in that the child uses it by benefitting from the steam it emits. The commenter also questions

the Commission's interpretation of "interaction" in the example of a lamp that has a childish theme (for example, a nonmovable fire truck with a Dalmatian) but does not have "play value" or features that add play value or other features that would invite physical interaction with the lamp beyond turning it on or off. The commenter believes such childish embellishments are expressly designed to appeal primarily to children and to be used in a child's room, not in that of an adult.

(Response 11)—We agree that products that are designed or intended primarily for children 12 years of age or younger would be considered children's products and that the child's interaction with the product does not have to be physical, although that is generally the case. We noted earlier the example of the crib mobile, where the interaction is not direct physical contact, but where the child's interaction with the mobile is to be entertained, soothed, or transitioned to sleep (to mention a few of the purposes stated in the advertisements for these products). Whether these products are children's products will be determined by an evaluation of all the factors listed in the statute, just as with any other product. Adult lamps or ordinary household humidifiers that are placed in any room of a home would be considered general use products. The ability or inability of a young child to turn a lamp (or other product) on or off would not determine whether or not it is a children's product. Attempting to make a distinction as to whether a product is intended for children 12 years of age or younger, based on some age under thirteen at which the interaction may change to direct physical interaction with a product creates artificial age distinctions that are not supported by the statutory language. This represents a change from the proposed rule, and any language in the preamble to the contrary should be disregarded, and the final rule is revised to reflect this change.

A home furnishing product that is embellished or decorated in a manner that is appealing to children 12 years of age or younger and is marketed to be placed in the rooms of such children could be considered a children's product. Such embellishment would not be considered in isolation, however. Features that invite or entice the child to use the product, or invite physical interaction, would support such a determination along with how the product is marketed and advertised and any manufacturer's statement of intended use.

15. *The Age Determination Guidelines—§ 1200.2(c)(4) (Formerly § 1500.92(c)(4)).* Proposed § 1500.92(c)(4) would quote the statutory factor at section 3(a)(2)(D) of the CPSA regarding the Age Determination Guidelines ("Guidelines") issued by the Consumer Product Safety Commission staff in September 2002 and any successor to such guidelines. The proposal also would explain that a product's appeal to different age groups and the capabilities of those age groups may be considered when making determinations about the appropriate user groups for products.

(Comment 12)—A few commenters state that the Guidelines are only intended to evaluate the play value of toys and should not be expanded to evaluate whether children of certain ages can successfully perform specific tasks if the product or type of product is not specifically mentioned by the Guidelines.

(Response 12)—We disagree with the commenters. Congress has mandated that the Age Determination Guidelines be one of the four statutory factors considered in determining whether a product is intended primarily for children. The Guidelines generally describe the factors that appeal to children and the activities that they can perform across childhood and can be used in making an age determination of any product, whether it is a toy or other article intended for use by children. The Guidelines provide information about social, emotional, cognitive, and physical developments during childhood. That information applies to many products not actually mentioned by name in the Guidelines.

16. *Examples—§ 1200.2(d) (Formerly § 1500.92(d)).* Proposed § 1500.92(d) would provide examples to help manufacturers understand what types of products would constitute a children's product under the CPSA.

We did not receive any specific comment on this provision. Therefore, other than renumbering the provision to be § 1200.2(d), we have finalized this section without change.

17. *Furnishings and Fixtures—§ 1200.2(d)(1) (Formerly § 1500.92(d)(1)).* Proposed § 1500.92(d)(1) would give examples of general home furnishings and fixtures (such as ceiling fans, humidifiers, and air purifiers) that often are found in children's rooms or schools, but would not be considered children's products unless they are decorated or embellished with a childish theme, have play value, and/or are sized for a child. The proposal also would give examples of home or school furnishings that are primarily intended for use by children and considered children's products, such as infant tubs, bath seats, and child-sized chairs. We also stated that decorative items, such as holiday decorations and household seasonal items that are intended only for display and with which children are not likely to interact, are generally not considered children's products because they are intended to be used by adults.

(Comment 13)—One commenter states that hooks should be considered general use products, whether or not they are embellished with a children's theme.

(Response 13)—Any home furnishing or fixture that is decorated or embellished with a childish theme and invites use of the product by the child, is sized for a child, or is marketed to appeal primarily to a child, could be found to be a children's product designed or intended primarily for children 12 years of age or younger, such as, for example, clothing hooks embellished with a childish theme to make them appear to be pirate's hooks. As we noted in the preamble to the proposed rule, unembellished clothing hooks would be considered general use products, unless a manufacturer attaches the hook to a children's product, such as a child-sized desk (thereby making it clear the hook is intended to be used primarily by a child) in which case that hook would be considered a children's product.

(Comment 14)—One commenter seeks clarification on the factors on furniture and collections of furniture that are suitable for children from birth through college. According to the commenter, manufacturers use various terms that are confusing, including "juvenile" and "youth" furniture. In addition, the commenter requests an ability to obtain informal and quick opinions from the Commission staff, to make such opinions publicly available on the web, and to create a mechanism for resolving disputes.

(Response 14)—The manufacturer is in the best position to initially determine whether a "collection" of furniture is designed or intended primarily for children 12 years of age or younger. However, to the extent that children 12 years of age or younger will be using such furniture from birth or toddler age through their teenage years, we consider such furniture to be children's products because children will be interacting with such furniture throughout their childhood. These items are likely to be sized for small children and may have other characteristics, such as bright colors or embellishments that would be appealing to children. Although, such products may come with extension kits or other modifications to make them more

appropriate for older children, the furniture is intended primarily for use by young children who may also use such furnishings later as they become older. To provide guidance regarding determinations that have been made by Commission staff, as appropriate, we will post on our Web site, *http://www.cpsc.gov,* some products that have been determined to be either children's products or general use products, subject to our public disclosure of information requirements under 15 U.S.C. 2055, CPSC regulations at 16 CFR part 1101, and the availability of CPSC resources.

(Comment 15)—One commenter requests that general home furnishings include carpets and rugs as examples.

(Response 15)—To provide additional clarity to this section, the final rule includes carpets and rugs in the examples of general home furnishings and fixtures. Generally, home furnishings and fixtures would not be considered children's products unless they are decorated or embellished with childish themes and invite use by a child 12 years of age or younger, are sized for a child, or are marketed to appeal primarily to children. In the case of rugs and carpets, the particular color or size of a rug or carpet, considered alone, would not be sufficient to make a determination that a rug or carpet is a children's product.

(Comment 16)—Another commenter requests that general home furnishings include holiday decorations, regardless of theme, because such products are for display only and are not intended to be children's products. One commenter also states that not all Halloween products should be considered children's products.

(Response 16)—We agree, in part, and disagree, in part, with the commenters. We agree that most holiday decorations, including seasonal decorations, are not children's products, even though they may appeal to children. However, certain products such as Halloween costumes, that are considered toys and sold and marketed in toy stores, would continue to be considered children's products if intended primarily for children 12 years of age or younger.

18. *Collectibles—§ 1200.2(d)(2) (Formerly § 1500.92(d)(2)).* Proposed § 1500.92(d)(2) would distinguish adult collectibles from children's collectibles based on themes that are inappropriate for children 12 years of age or younger; features that preclude use by children during play, such as high cost, limited production, and display features (such as hooks or pedestals); and whether such items are marketed alongside children's products.

(Comment 17)—A few commenters request that model trains be specifically included in the definition of general use products. The commenters state that the average age of a model railroader is 53 years old and that there is a level of sophistication required to operate the locomotives. Additionally, the commenters note that model trains may be costly, with prices from $50 up to $1,575.

(Response 17)—We agree that certain model railroads and trains are not children's products given the large number of adult model railroad hobbyists, the costs involved, and the level of sophistication required to operate them. Model trains and model train accessories (such as scenery, scale buildings, and supplies), are made by model railway manufacturers who sell their trains at model train shops and model train hobby stores. Children's train sets may have childish themes and may be easier for a child to assemble and use. By contrast, model railroad hobbyists collect trains, build miniature landscapes for the trains, or even operate their own miniature railroads outdoors. Accordingly, the final rule adds "model railways and trains made for hobbyists" to the list of examples of "collectible" items that would be considered general use products.

(Comment 18)—One commenter asks that we add fragility of the materials as a consideration in determining collectibles. The commenter also requests a registry of collectibles or online listing to provide clear guidance.

(Response 18)—We stated in our example in proposed § 1500.92(d)(2) that collectible plush bears are those which have high cost, are highly detailed, with fragile accessories, display cases, and platforms. We believe that fragility of the materials may also be considered when assessing a collectible because children are less likely to be given items that can break. Accordingly, we have revised this section to include "fragile features" as a characteristic to help distinguish collectibles from children's products. The first sentence in this section now states, "Adult collectibles may be distinguished from children's collectibles by themes that are inappropriate for children 12 years of age or younger, have features that preclude use by children during play, such as high cost, limited production, fragile features, display features (such as hooks or pedestals), and are not marketed alongside children's products (for example, in a children's department) in ways that make them indistinguishable from children's products."

As for the commenter's request regarding a registry of collectibles or online listing, as appropriate, we will post on our Web site, *http://www.cpsc.gov,* some products that have been determined to be either children's products or general use products by Commission staff, subject to our public disclosure of information requirements under 15 U.S.C. 2055, CPSC regulations at 16 CFR part 1101, and the availability of CPSC resources.

(Comment 19)—One commenter disputes the implication that collectibles must be of high cost or uniquely marked. The commenter asserts that labeling products "Not a toy" or "Not for use by children 12 and under" would be important elements in identifying such products as intended for adults.

(Response 19)—We agree that not all collectibles are high cost. High cost is simply one among several considerations we will evaluate when making a determination. Generally, many collectibles are of higher cost and/or marked to distinguish such products from similar children's products. The cost of an item, while not determinative, can be an important consideration in analyzing collectibles because very expensive collectibles are less likely to be given to children who may accidently destroy them. In addition, as discussed in part B.5 of this document, the statement by a manufacturer about the intended use of a product, including a label on such product, will be considered in making any age determination.

19. *Jewelry—§ 1200.2(d)(3) (Formerly § 1500.92(d)(3).* Proposed § 1500.92(d)(3) would provide characteristics for distinguishing children's jewelry from adult jewelry. For example, the proposed interpretative rule would explain that jewelry intended for children is generally sized, themed, and marketed to children and that characteristics such as size, very low cost, play value, childish themes on the jewelry, and sale with children's products may suggest that the jewelry is a children's product. The proposed interpretative rule also would explain that many aspects of an item's design and marketing are considered when determining the age of consumers for whom the product is intended and will be purchased. The proposed interpretative rule listed, as aspects of the item's design and marketing the following factors: Advertising; promotional materials; packaging graphics and text; size; dexterity requirements for wearing; appearance (coloring, textures,

materials, design themes, licensing, level of realism); and cost.

(Comment 20)—One commenter disputes the considerations that are used in distinguishing adult jewelry from children's jewelry, including considerations such as dexterity requirements and play value. In addition, this commenter states that the proposed interpretative rule failed to include design drawings, brand plans, and compliance with standards for adult jewelry as considerations of a manufacturer's intent in developing a product. The commenter asserts that the proposed interpretative rule improperly expands the application of the Age Determination Guidelines to products other than toys.

(Response 20)—We disagree that we place an undue emphasis on dexterity or play value when making age determinations. Dexterity requirements may be useful for making distinctions between children's and adult jewelry. While some elastic bracelets may be useful to people suffering from arthritis, delicate clasps are difficult for younger children to use, which would indicate that such jewelry may be intended for older consumers. While jewelry is not considered a toy, some jewelry can have play value. The most common type of play associated with children's jewelry is role playing. However, although some general use products may have intrinsic play value, they do not become children's products based on that characteristic alone. Play value and dexterity are only two of the characteristics that are examined in making age determinations for jewelry.

Regarding the commenter's criticism that the proposed rule did not include design drawings, brand plans, and compliance with adult jewelry standards, the proposed interpretative rule specifically indicated that many aspects of an item's design and marketing are considered when determining the age of consumers for whom the jewelry is intended and by whom it will be purchased. The commenter states that design drawings and brand plans should be relevant considerations in making an age determination. We agree that such information is relevant to consider when available for review. Moreover, the manufacturer's intent in designing, branding, or developing a product is applicable to the factor regarding the statement by the manufacturer about the intended use of the product. This could include the manufacturer's compliance with state standards for adult jewelry. As discussed in § 1200.2(a)(1), the manufacturer's statement is only one of four statutory factors considered in making a determination.

Additionally, the Commission recognizes that the determination of whether a product is a children's product is based on whether it is designed or intended primarily for children 12 years of age or younger and not the frequency of such a product's appeal to adults. We have made this change to the rule to reflect this recognition.

We disagree that we improperly expanded the Age Determination Guidelines (2002) to cover products other than toys. The Guidelines are among the factors that must be considered when making determinations. The descriptions of factors that appeal to children and the activities that they can perform across childhood are described generally in the Guidelines for use in age determinations of any product, whether it is a toy or other article intended for children. The Guidelines provide information about social, emotional, cognitive, and physical developments during childhood that are applicable to many products that are not specifically named in the Guidelines.

20. *DVDs, Video Games, and Computer Products—§ 1200.2(d)(4) (Formerly § 1500.92(d)(4)).* Proposed § 1500.92(d)(4) would consider most computer products and electronic media devices, such as CDs, DVDs, and DVD players, to be general use products. However, the proposal also would explain that some CDs and DVDs may have encoded content that is intended for and marketed to children, such as children's movies, games, or educational software. The proposed interpretative rule would explain that CPSC staff may consider ratings given by entertainment industries and software rating systems when making an age determination. The proposed interpretative rule would note that, among the CDs and DVDs that have content embedded that is intended for children, certain CDs and DVDs that contain content for very young children would not be handled or otherwise touched by children because they do not have the motor skills to operate media players and because such products, by themselves, do not have any appeal to children. Accordingly, the proposed interpretative rule would indicate that these types of CDs or DVDs would not be considered children's products because they are not used "by" children and children do not physically interact with such products. The proposed interpretative rule would say that CDs or DVDs and other digital media that may be handled by older children could be considered children's products if such movies, video games, or music were specifically aimed at and marketed to children 12 years of age or younger and have no appeal to older audiences.

(Comment 21)—Several commenters assert that an approach distinguishing CDs and DVDs for very young children who lack the motor skills to operate CDs and DVDs, from CDs and DVDs for older children who have such motor skills is a false distinction. These commenters state that a very young child is not allowed to handle a CD or DVD unless he or she learns to insert it properly into a CD or DVD player. The commenters claim that a child will interact much more with the CD or DVD player than he or she will interact with the CD or DVD itself. A commenter also states that the Commission's proposed guidelines regarding CDs provide no clear mechanism for manufacturers and distributors to interpret or implement the definition; that children's music is not marketed like toys as "age 3+" or "suitable for under 3"; and any such distinctions in children's music would be entirely arbitrary and meaningless. Another commenter found the DVD discussion to be confusing and thought it would be difficult to implement. The commenter suggested eliminating the distinction between products intended for nursery-aged children and those intended for the next age group and thought we should just consider all of those DVDs to be children's products. The commenter also said it would be easier to base the age determinations on the already established ratings systems.

(Response 21)—Upon further consideration, we agree that attempting to make a distinction about whether a CD or a DVD is a children's product based upon whether the intended audience for a CD or DVD is an infant or a slightly older child only further complicates the age determination. With respect to the CDs and DVDs, consistent with an analysis of other products, we must consider the four statutory factors to assess these products. CDs and DVDs could be considered children's products if such movies, video games, or music were specifically created for and marketed to children 12 years of age or younger and have little or no appeal to older audiences. The ratings and targeted age suitability given to the product will be considered when making an age determination. This represents a change from the proposed rule, and any language in the preamble to the contrary should be disregarded, and the final rule is modified to reflect this change.

It should be noted that the final rule also states that some media players or

devices that play electronic content, if embellished or decorated with childish themes, sized for children, or marketed to appeal primarily to children, could be considered children's products because children 12 years of age or younger likely would be the main users of such items, and older children and adults would be unlikely to use such products.

(Comment 22)—One commenter sought clarification on how this section would affect the existing process for video game research and rating procedures regarding age. Another commenter states that the existing rating systems should be used to determine whether the product is intended for children aged 12 years and under.

(Response 22)—We do not expect that our definition of what is or is not a children's product to affect the research of products under development on children's electronic media. The definition would not affect existing rating mechanisms, which fall under the authority of the Federal Communications Commission. Video game rating systems would be considered by staff as one indicator of age range for purposes of age grading.

(Comment 23)—Other commenters ask that we add more products to a general use category, including game consoles, book readers, digital media players, cell phones, and digital assistant communication devices sized for use by adults, irrespective of any childish decorations, to avoid any confusion. Some commenters also seek clarification that an accessory to an electronic children's product (i.e., transformers, cables, and connectors) is not itself a children's product if it is not for use by children but is, instead, likely to be used by parents or guardians. One commenter states that DVDs are exempt from the small parts requirement under ASTM F963–08. Accordingly, this commenter seeks clarity on how children's DVDs would be treated.

(Response 23)—We believe that most of these product categories, including game consoles, book readers, digital media players, cell phones, and digital assistant communication devices, power adapters, data cords, and other accessories to such devices, that are intended for older children and adults, fall in the general use category. Accordingly, the final rule adds them as examples to the list of general use items, along with CD and DVD players. As noted earlier, the final rule also states that some media players or devices that play electronic content, if embellished or decorated with childish themes, sized for children, or marketed to appeal primarily to children, could be considered children's products because children 12 years of age or younger likely would be the main users of such items, and older children and adults would be unlikely to use such products.

The exemption from small parts for DVDs has no bearing on age determinations for DVDs made for children 12 years of age or younger. The small parts limitations are only applicable to toys for children younger than 3 years of age.

21. *Art Materials—§ 1200.2(d)(5) (Formerly § 1500.92(d)(5)).* Proposed § 1500.92(d)(5) would consider art materials sized, decorated, and marketed to children 12 years of age or younger, such as crayons, finger paints, and modeling dough, to be children's products. The proposed interpretative rule would explain that crafting kits and supplies that are not specifically marketed to children 12 years of age or younger likely would be considered products intended for general use, but that the marketing and labeling of raw materials (such as modeling clay, paint, and paint brushes) may often be given high priority for these art materials because the appeal and utility of these raw materials has such a wide audience.

(Comment 24)—One commenter states that the emphasis on marketing will lead to confusion because many art tools are small and may also be used by an adult. The commenter states that a more compelling and logical framework is to consider the circumstances under which a child will be using the product. The commenter asserts that, if the product has an instructional purpose which will be under the supervision of an adult, such products should be considered general use products, including child-sized craft tools, child-sized musical instruments, child-sized saddles and equestrian equipment, and classroom science kits.

(Response 24)—Size, marketing, and other factors will be considered when making age determinations. If a distributor or retailer sells or rents a general use product in bulk (such as a raw art materials or art tools) through distribution channels that target children 12 years of age or younger in educational settings, such as schools, summer camps, or child care facilities, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination.

The level of expected adult supervision needed for a product is not generally useful when making a children's product determination. If the product otherwise meets the definition of "children's product," the amount of supervision over the child's use of a children's product will not transform a children's product into a general use product. Accordingly, products such as small-sized craft tools, small-sized musical instruments, and small-sized saddles and equestrian equipment would be assessed on a case-by-case basis to determine whether such products are, in fact, children's products. We do note, however, that if the sizing of the product indicates that children 12 years of age or younger would be more likely to use such products than older children or adults, the product would likely fall under the children's product category, rather than the general use category.

The Commission, on its own initiative, is adding the words "art tools" to the final rule to better describe those materials, such as paint brushes, which may have a wide audience due to their appeal and utility and is adding a fuller explanation of distribution strategies that might target settings such as schools.

As for classroom science kits, we address such products in part B.23 of this document and its discussion of § 1200.2(d)(7).

(Comment 25)—One commenter states that duplicative third party testing under the CPSIA should not be required for products that are covered under the Labeling of Hazardous Art Materials Act (LHAMA). Accordingly, this commenter requests that LHAMA be included as a FHSA labeling law in addition to the guidance that most art materials are general use products.

(Response 25)—We disagree with the comment because we do not believe that LHAMA duplicates testing required under the CPSIA. LHAMA requires that the manufacturer, importer, or repackager of art materials have their product's formulation reviewed by a toxicologist for its potential to cause chronic adverse health effects. A conformance statement on the product is used to certify that the product has been so reviewed. However, the CPSIA introduces additional test requirements beyond what is required under LHAMA.

As for the commenter's request that we include LHAMA as a labeling requirement under the Federal Hazardous Substances Act (FHSA), LHAMA does not contain a performance standard similar to those in consumer

product safety rules but rather requires labeling in the form of a conformance statement that the product formulation has been reviewed by a toxicologist. The requirements of LHAMA are similar to the labeling requirements of the FHSA, of which it is a part. Therefore, third party testing to LHAMA is not required. An art material designed or intended primarily for children 12 years of age or younger would have to be tested by a third party laboratory to demonstrate compliance with CPSIA, but it would not require third party testing and certification to the LHAMA requirements. For the same reasons, no general conformity certificate is required for general use art materials.

22. *Books—§ 1200.2(d)(6) (Formerly § 1500.92(d)(6)).* Proposed § 1500.92(d)(6) would state that the content of a book can determine its intended audience. The proposed interpretative rule would explain that children's books have themes, vocabularies, illustrations, and covers that match the interests and cognitive capabilities of children 12 years of age or younger. The proposal also would explain that the age guidelines provided by librarians, education professionals, and publishers may be dispositive for determining the intended audience. Furthermore, some children's books have a wide appeal to the general public, and in those instances, further analysis may be necessary to assess who the primary intended audience is based on consideration of relevant additional factors, such as product design, packaging, marketing, and sales data.

(Comment 26)—One commenter asks us to clarify whether children's magazines are covered by the CPSIA. Another commenter states that sales data should not be considered for books since adults purchase books for children.

(Response 26)—Children's magazines are evaluated using the same principles as those that apply to children's books in the interpretative rule. If intended primarily for children 12 years of age or younger, magazines must comply with the CPSIA requirements for children's products. We only consider sales data to be relevant to the extent that it reveals where the products are sold, such as in a children's book or toy store.

23. *Science Equipment—§ 1200.2(d)(7) (Formerly § 1500.92(d)(7)).* Proposed § 1500.92(d)(7) would consider microscopes, telescopes, and other scientific equipment that would be used by an adult, as well as a child, to be general use products. The proposed interpretative rule would explain that equipment with a marketing strategy that targets schools, such as scientific instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the equipment is leased, rented, or sold. However, the proposal would further explain that, in general, scientific equipment that is specifically sized for children and/or has childish themes or decorations intended to attract children is considered a children's product. Toy versions of such items are also considered children's products.

(Comment 27)—Several commenters state that school supplies, such as science equipment, writing devices, and musical instruments used in educational settings, should be considered general use items. They argue that many items that are specified in these curriculums can be easily found at department stores, hardware stores, grocery stores, and specialty shops. In addition, other commenters state that many science and math programs and kits are principally designed and used as instructional materials for teachers in a classroom setting. Accordingly, they request that we revise the rule to include such items as general use items when marketed and sold for the purpose of supervised, hands-on educational instruction. In addition, a few commenters request that pens, pencils, and other office supplies be specifically included as general use items because they are used mainly by the general public.

(Response 27)—We agree with the commenters that many math and science kits that are sent to schools for the purpose of teaching these subjects contain materials, such as rubber bands, staples, paper clips, and other items, that can be found in any hardware or grocery store. In determining whether these assembled products should now be considered children's products because of their new use, packaging, and marketing to schools, we consider the four specified statutory factors together as a whole. If a distributor or retailer sells or rents a general use product in bulk through distribution channels that target children 12 years of age or younger in educational settings, such as schools or summer camps, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination. Products mainly intended for use by the instructor would not be considered children's products.

Some pens and pencils are designed or intended primarily for children 12 years of age or younger. However, if a pen, pencil, or other office supply is not designed or intended primarily for children 12 years of age or younger, it would not be considered a children's product.

The Commission notes that, in the context of science equipment, size may be more pertinent to protective gear, such as gloves and aprons, in making an age determination than it would be to the scientific instruments themselves and is, on its own initiative, changing the final rule to reflect this.

24. *Sporting Goods and Recreational Equipment—§ 1200.2(d)(8) (Formerly § 1500.92(d)(8)).* Proposed § 1500.92(d)(8)) would consider sporting goods that are primarily intended for consumers older than 12 years of age to be general use items. The proposed interpretative rule would explain that regulation-sized sporting equipment, such as basketballs, baseballs, bats, racquets, and hockey pucks, are general use items even though some children 12 years of age or younger will use them. However, this section would provide that sporting goods become children's products when they are sized to fit children or are otherwise decorated with childish features that are intended to attract children 12 years of age or younger. Likewise, this section would provide that recreational equipment, such as roller blades, skateboards, bicycles, camping gear, and fitness equipment, are considered general use products unless they are sized to fit children 12 years of age or younger and/or are decorated with childish features by the manufacturer.

(Comment 28)—Several commenters state that sporting equipment intended for "tweens," teens, and young adults should not be considered "children's products." One commenter states that "legitimate" sporting goods should be general use products whether they are used by a 9-year-old or 13-year-old and that "size" is irrelevant to making the determination. The commenter asserts that their uses and essential purposes are no different than sporting equipment used by teens. Another commenter states that the cost of testing these products was too high and resulted in delays in manufacturing.

(Response 28)—We agree that products sized for general use are not converted into children's products because they are also used by children 12 years of age or younger (such as

"tweens" whom, based upon the Age Determination Guidelines issued by the Consumer Product Safety Commission staff in September 2002, for purposes of this response, we consider to be individuals under 13, but not younger than 9 years of age). Unless such items are specifically marketed to children or have extra features that make them more suitable for children than for adults, they would be considered general use products. However, we disagree that sizing of the sporting equipment would be irrelevant to the age determination. If children 12 years or younger would mainly use the product because it would be too small or inappropriate for older children to use, then it likely would be considered a children's product.

As for the comment regarding testing costs and manufacturing delays, such matters are outside the scope of this rulemaking. Comments related to testing and certification are addressed in separate rulemaking on product certification published in the **Federal Register** on May 20, 2010 (75 FR 28336). Additionally, the Commission recognizes that the use of the term "regulation sized sporting equipment" leaves room for confusion between whether the Commission is referring to youth regulation size or adult regulation size. Accordingly, the final rule is modified to reflect this consideration and renumbered as *§ 1200.2(d)(8).*

(Comment 29)—One commenter states that the interpretative rule should be clear that a product sized for an adult, such as a baseball glove, is considered a general use product even if there is a cartoon character on it. In addition, the commenter asserts that a wading pool may be a children's product based on size alone, regardless of whether it contains additional play features, and requests a definition for "shallow" in reference to wading pool depth.

(Response 29)—We agree that the presence of a cartoon character on an adult-sized product is not sufficient to label a product as a children's product. Age determinations take into account the principal use patterns of a given product; so if a baseball glove is too large for children to use, it would not be intended for use by children 12 years of age or younger and therefore would not be a children's product, no matter how it is decorated.

In response to the comment regarding wading pools, we agree that such pools generally are intended for children even without childish themes or play features. The size, decorations, and depth of a pool may be sufficient to determine that a product is primarily intended for use by children. However, the Commission does not have regulations setting forth the dimensions of wading pools.

25. *Musical Instruments—§ 1200.2(D)(9) (Formerly § 1500.92(d)(9)).* Proposed § 1500.92(d)(9) would consider musical instruments suited for an adult musician as well as a child to be general use products. Instruments primarily intended for children can be distinguished from adult instruments by their size and marketing themes. The proposed interpretative rule also would explain that products with a marketing strategy that targets schools, such as instrument rentals, would not convert such products into children's products if such products are intended for general use, regardless of how the instruments are leased, rented, or sold. These instruments are intended by the manufacturer for use primarily by adults, although there also may be incidental use by children through such programs. However, this section also would provide that products that produce music or sounds in a manner that simplifies the process so that children can pretend to play an instrument are considered toys primarily intended for children 12 years of age or younger.

(Comment 30)—One commenter states that the proposed rule should explicitly exclude from the definition of children's product electronically-aided musical instruments and musical devices that are preprogrammed by the user or the manufacturer.

(Response 30)—We agree that the preprogrammed sounds and demonstration pieces in electronically-aided musical instruments would be considered general use products. However, toys that have preprogrammed sounds will continue to be considered children's products. Accordingly, we have revised the rule to add "including electronically-aided musical instruments" after "Musical instruments."

The Commission notes that if a distributor or retailer sells or rents in bulk, general use musical instruments through distribution channels that target children 12 years of age or younger in educational settings, such as schools or summer camps, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination.

26. *Other Issues*

(Comment 31)—One commenter states that the effective date should be delayed to give manufacturers an opportunity to evaluate whether or not their products are children's products pursuant to this rule.

(Response 31)—Because this is an interpretative rule, a delayed effective date is not required by the Administrative Procedure Act (5 U.S.C. 553(d)).

(Comment 32)—A few commenters raise issues with footwear. These commenters state that there is no certainty as to whether an article of footwear is a children's product and that the issue is confused especially with youth footwear. According to the commenters, many 12-year-olds wear adult footwear and that size does not necessarily relate to age. The commenters request an objective standard of footwear of 24 centimeters (cm) or more as being intended for adults.

(Response 32)—We believe that the manufacturer is in the best position to make an initial determination regarding whether footwear is primarily intended for children 12 years of age or younger. However, we will rely on the statutory factors, rather than a single factor since it is possible that other features can strongly indicate that the footwear is intended primarily for children 12 years old or younger even though the length of the footwear exceeds 24 cm.

List of Subjects in 16 CFR Part 1200

Business and industry, Infants and children, Consumer protection, Imports, Toys.

■ For the reasons stated above, the Commission adds 16 CFR part 1200 to read as follows:

PART 1200—DEFINITION OF CHILDREN'S PRODUCT UNDER THE CONSUMER PRODUCT SAFETY ACT

Sec.
1200.1 Purpose.
1200.2 Definition of children's product.

Authority: 15 U.S.C. 2052(2).

§ 1200.1 Purpose.

This part provides guidance on the definition of children's product and the factors the Commission will consider when making determinations regarding children's products as set forth under 15 U.S.C. 2052(2).

§ 1200.2 Definition of children's product.

(a) *Definition of "Children's Product"*—(1) Under section 3(a)(2) of

the Consumer Product Safety Act (CPSA), a children's product means a consumer product designed or intended primarily for children 12 years of age or younger. The term "designed or intended primarily" applies to those consumer products mainly for children 12 years old or younger. Whether a product is primarily intended for children 12 years of age or younger is determined by considering the four specified statutory factors. These factors are:

(i) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable.

(ii) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.

(iii) Whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger.

(iv) The Age Determination Guidelines issued by the Commission staff in September 2002 and any successor to such guidelines.

(2) The examples discussed herein may also be illustrative in making such determinations; however, the determination of whether a product meets the definition of a children's product depends on factual information that may be unique to each product and, therefore, would need to be made on a case-by-case basis. The term "for use" by children 12 years or younger generally means that children will physically interact with such products based on the reasonably foreseeable use of such product. Toys and articles that are subject to the small parts regulations at 16 CFR Part 1501 and in ASTM F963 would fall within the definition of children's product since they are intended for children 12 years of age or younger. Toys and other articles intended for children up to 96 months (8 years old) that are subject to the requirements at 16 CFR 1500.48 through 1500.49 and 16 CFR 1500.50 through 1500.53 would similarly fall within the definition of children's product given their age grading for these other regulations. Therefore, a manufacturer could reasonably conclude on the basis of the age grading for these other regulations that its product also must comply with all requirements applicable to children's products including, but not limited to, those under the Federal Hazardous Substances Act, ASTM F963, "Standard Consumer Safety Specification for Toy Safety," and the Consumer Product Safety Improvement Act of 2008.

(b) *Definition of "General Use Product"*—(1) A general use product means a consumer product that is not designed or intended primarily for use by children 12 years old or younger. General use products are those consumer products designed or intended primarily for consumers older than age 12. Some products may be designed or intended for use by consumers of all ages, including children 12 years old or younger, but are intended mainly for consumers older than 12 years of age. Examples of general use products may include products with which a child would not likely interact, or products with which consumers older than 12 would be as likely, or more likely to interact. Products used by children 12 years of age or younger that have a declining appeal for teenagers are likely to be considered children's products.

(2) Other products are specifically not intended for children 12 years of age or younger. These products, such as cigarette lighters, candles, and fireworks, which the Commission has traditionally warned adults to keep away from children, are not subject to the CPSIA's lead limits, tracking label requirement, and third-party testing and certification provisions. Similarly, products that incorporate performance requirements for child resistance are not children's products as they are designed specifically to ensure that children cannot access the contents. This would include products such as portable gasoline containers and special packaging under the Poison Prevention Packaging Act.

(c) *Factors Considered*—To determine whether a consumer product is primarily intended for a child 12 years of age or younger the four specified statutory factors must be considered together as a whole. The following four factors must be considered:

(1) A statement by a manufacturer about the intended use of such product, including a label on such product if such statement is reasonable. A manufacturer's statement about the product's intended use, including the product's label, should be reasonably consistent with the expected use patterns for a product. A manufacturer's statement that the product is not intended for children does not preclude a product from being regulated as a children's product if the primary appeal of the product is to children 12 years of age or younger, as indicated, for example, by decorations or embellishments that invite use by the child, being sized for a child or being marketed to appeal primarily to children. Similarly, a label indicating that a product is for ages 9 and up does not necessarily make it a children's product if it is a general use product. Such a label may recommend 9 years old as the earliest age for a prospective user, but may or may not indicate the age for which the product is primarily intended. The manufacturer's label, in and of itself, is not considered to be determinative.

(2) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger.

(i) These representations may be express or implied. For example, advertising by the manufacturer expressly declaring that the product is intended for children 12 years of age or younger will support a determination that a product is a children's product. While, for example advertising by the manufacturer showing children 12 years of age or younger using the product may support a determination that the product is a children's product. These representations may be found in packaging, text, illustrations and/or photographs depicting consumers using the product, instructions, assembly manuals, or advertising media used to market the product.

(ii) The product's physical location near, or visual association with, children's products may be a factor in making an age determination, but is not determinative. For example, a product displayed in a children's toy section of a store may support a determination that the product is a children's product. However, where that same product is also sold in department stores and marketed for general use, further evaluation would be necessary. The Commission recognizes that manufacturers do not necessarily control where a product will be placed in a retail establishment and such lack of control will be considered. The Commission evaluates products more broadly than on a shelf-by-shelf or store-by-store basis.

(iii) The product's association or marketing in conjunction with nonchildren's products may not be determinative as to whether the product is a children's product. For example, packaging and selling a stuffed animal with a candle would not preclude a determination that the stuffed animal is a children's product since stuffed animals are commonly recognized as being primarily intended for children.

(3) Whether the product is commonly recognized by consumers as being intended for use by children 12 years of age or younger. Consumer perception of the product's use by children, including

its reasonably foreseeable use, will be evaluated. Sales data, market analyses, focus group testing, and other marketing studies may help support an analysis regarding this factor.

(i) Features and Characteristics—additional considerations that may help distinguish children's products from nonchildren's products include:

(A) Small sizes that would not be comfortable for the average adult;

(B) Exaggerated features (large buttons, bright indicators) that simplify the product's use;

(C) Safety features that are not found on similar products intended for adults;

(D) Colors commonly associated with childhood (pinks, blues, bright primary colors);

(E) Decorative motifs commonly associated with childhood (such as animals, insects, small vehicles, alphabets, dolls, clowns, and puppets);

(F) Features that do not enhance the product's utility (such as cartoons) but contribute to its attractiveness to children 12 years of age or younger; and

(G) Play value, i.e., features primarily attractive to children 12 years of age or younger that promote interactive exploration and imagination for fanciful purposes (whimsical activities lacking utility for accomplishing mundane tasks; actions performed for entertainment and amusement).

(ii) Principal use of the product—the principal uses of a product take precedence over other actions that are less likely to be performed with a product. For example, when a child pretends that a broom is a horse, that does not mean the item is a children's product because the broom's principal use is for sweeping;

(iii) Cost—the cost of a given product may influence the determination of the age of intended users; and

(iv) Children's interactions, if any, with the product—products for use in a child's environment by the caregiver but not for use by the child would not be considered to be primarily intended for a child 12 years of age or younger.

(4) The Age Determination Guidelines issued by the Consumer Product Safety Commission staff in September 2002, and any successor to such guidelines. The product's appeal to different age groups and the capabilities of those age groups may be considered when making determinations about the appropriate user groups for products.

(d) *Examples*—To help manufacturers understand what constitutes a children's product under the CPSA, the following additional examples regarding specific product categories are offered:

(1) Furnishings and Fixtures—General home furnishings and fixtures (including, but not limited to: Rocking chairs, shelving units, televisions, digital music players, ceiling fans, humidifiers, air purifiers, window curtains, tissue boxes, rugs, carpets, lamps, clothing hooks and racks) that often are found in children's rooms or schools would not be considered children's products unless they are decorated or embellished with a childish theme and invite use by a child 12 years of age or younger, are sized for a child, or are marketed to appeal primarily to children. Examples of home or school furnishings that are designed or intended primarily for use by children and considered children's products include: Infant tubs, bath seats, small bean bag chairs with childish decorations, beds with children's themes, child-sized desks, and child-sized chairs. Decorative items, such as holiday decorations and household seasonal items that are intended only for display, with which children are not likely to interact, are generally not considered children's products, since they are intended to be used by adults.

(2) Collectibles—Adult collectibles may be distinguished from children's collectibles by themes that are inappropriate for children 12 years of age or younger, have features that preclude use by children during play, such as high cost, limited production, fragile features, display features (such as hooks or pedestals), and are not marketed alongside children's products (for example, in a children's department) in ways that make them indistinguishable from children's products. For example, collectible plush bears have high cost, are highly detailed, with fragile accessories, display cases, and platforms on which to pose and hold the bears. Children's bears have lower costs and simple accessories that can be handled without fear of damage to the product. Another example of collectible items includes model railways and trains made for hobbyists.

(3) Jewelry—Jewelry intended for children is generally sized, themed, and marketed to children. The following characteristics may cause a piece of jewelry to be considered a children's product: Size; very low cost; play value; childish themes on the jewelry; sale with children's products (such as a child's dress); sale with a child's book, a toy, or party favors; sale with children's cereal or snacks; sale at an entertainment or educational event attended primarily by children; sale in a store that contains mostly children's products; and sale in a vending machine. In addition, many aspects of an item's design and marketing are considered when determining the age of consumers for whom the product is intended and will be purchased including: Advertising; promotional materials; packaging graphics and text; dexterity requirements for wearing; appearance (coloring, textures, materials, design themes, licensing, and level of realism); and cost. These characteristics will help jewelry manufacturers and consumers determine whether a particular piece of jewelry is designed or intended primarily for children 12 years of age or younger.

(4) DVDs, Video Games, and Computer Products—Most computer products and electronic media, such as CDs, DVDs, and video games, are considered general use products. However, CDs and DVDs with encoded content that is intended for and marketed to children, such as children's movies, games, or educational software may be determined to be children's products. CPSC staff may consider ratings given by entertainment industries and software rating systems when making an age determination. In addition, electronic media players and devices that are embellished or decorated with childish themes that are intended to attract children 12 years of age or younger, are sized for children, or are marketed to appeal primarily to children, are not likely to fall under the general use category where children 12 years or younger likely would be the primary users of such devices. However, electronic devices such as CD players, DVD players, game consoles, book readers, digital media players, cell phones, digital assistant communication devices, and accessories to such devices that are intended mainly for children older than 12 years of age or adults are products for general use.

(5) Art Materials—Materials sized, decorated, and marketed to children 12 years of age or younger, such as crayons, finger paints, and modeling dough, would be considered children's products. Crafting kits and supplies that are not specifically marketed to children 12 years of age or younger likely would be considered products intended for general use. Consideration of the marketing and labeling of raw materials and art tools (such as modeling clay, paint, and paint brushes) may often be given high priority in an age determination because the appeal and utility of these raw materials has such a wide audience. If a distributor or retailer sells or rents a general use product in bulk (such as a raw art materials or art tools) through distribution channels that target children 12 years of age or younger in

educational settings, such as schools, summer camps, or child care facilities, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination. The requirements of the Labeling of Hazardous Art Materials Act are similar to the labeling requirements of the FHSA, of which it is a part. Therefore, third party testing to LHAMA is not required. An art material designed or intended primarily for children 12 years of age or younger would have to be tested by a third party laboratory to demonstrate compliance with CPSIA, but it would not require third party testing and certification to the LHAMA requirements. For the same reasons, no general conformity certificate is required for general use art materials.

(6) Books—The content of a book can determine its intended audience. Children's books have themes, vocabularies, illustrations, and covers that match the interests and cognitive capabilities of children 12 years of age or younger. The age guidelines provided by librarians, education professionals, and publishers may be dispositive for determining the intended audience. Some children's books have a wide appeal to the general public, and in those instances, further analysis may be necessary to assess who the primary intended audience is based on consideration of relevant additional factors, such as product design, packaging, marketing, and sales data.

(7) Science Equipment—Microscopes, telescopes, and other scientific equipment that would be used by an adult, as well as a child, are considered general use products. Equipment that is intended by the manufacturer for use primarily by adults, although there may be use by children through such programs, is a general use product. Toy versions of such items are considered children's products. If a distributor or retailer sells or rents a general use product in bulk through distribution channels that target children 12 years of age or younger in educational settings, such as schools or summer camps, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination. Products mainly intended for use by the instructor would not be considered children's products. In general, scientific equipment that is specifically sized for children, such as protective gear, eyewear, gloves, or aprons and/or has childish themes or decorations and invites use by a child 12 years of age or younger or is marketed to appeal primarily to children is considered a children's product.

(8) Sporting Goods and Recreational Equipment—Sporting goods that are intended primarily for consumers older than 12 years of age are considered general use items. Sporting equipment, sized for adults, are general use items even though some children 12 years of age or younger will use them. Unless such items are specifically marketed to children 12 years of age or younger, or have extra features that make them more suitable for children 12 years of age or younger than for adults, they would be considered general use products. If children 12 years or younger would mainly use the product because it would be too small or inappropriate for older children to use, then it likely would be considered a children's product. Likewise, recreational equipment, such as roller blades, skateboards, bicycles, camping gear, and fitness equipment are considered general use products unless they are sized to fit children 12 years of age or younger and/or are decorated with childish features by the manufacturer.

(9) Musical Instruments—Musical instruments, including electronically-aided instruments suited for an adult musician, are general use products. Instruments intended primarily for children can be distinguished from adult instruments by their size and marketing themes. The Commission notes that if a distributor or retailer sells or rents in bulk, a general use musical instrument through distribution channels that target children 12 years of age or younger in educational settings, such as schools or summer camps, this type of a distribution strategy would not necessarily convert a general use product into a children's product. However, if the product is packaged in such a manner that either expressly states or implies with graphics, themes, labeling, or instructions that the product is designed or intended primarily for children 12 years of age or younger, then it may be considered a children's product if the required consideration of all four statutory factors supports that determination.

Dated: *October 6, 2010.*

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–25645 Filed 10–13–10; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 44

RIN 3038–AD24

Interim Final Rule for Reporting Pre-Enactment Swap Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is publishing for comment an interim final rule to implement new statutory provisions introduced by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Section 729 of the Dodd-Frank Act requires the CFTC to adopt, within 90 days of enactment of the Dodd-Frank Act, an interim final rule for the reporting of swap transactions entered into before July 21, 2010 whose terms had not expired as of that date ("pre-enactment unexpired swaps"). Pursuant to this mandate, the CFTC is today adopting an interim final rule requiring specified counterparties to pre-enactment unexpired swap transactions to report certain information related to such transactions to a registered swap data repository ("SDR") [1] or to the Commission by the compliance date to be established in reporting rules required under Section2(h)(5) of the CEA, or within 60 days after an SDR becomes registered under Section 21 of the CEA, whichever occurs first. An interpretive note to the rule advises that counterparties that may be required to report to an SDR or the CFTC will need to preserve information pertaining to the terms of such swaps.

DATES: This interim final rule is effective October 14, 2010. Comments

[1] The term "swap data repository" is defined in Section 1a(48) of the Commodity Exchange Act ("CEA" or the "Act") to mean "any person that collects and maintains information or records with respect to transactions or positions in, or the terms and conditions of, swaps entered into by third parties for the purpose of providing a centralized recordkeeping facility for swaps."

on all aspects of the interim final rule must be received on or before November 15, 2010.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Agency Web Site:* Follow the instructions for submitting comments at *http://www.federalregister.gov/agencies/commodity-futures-trading-commission.*
- *E-mail: peswapreport@cftc.gov.*
- *Mail:* Address to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[2]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Susan Nathan, Senior Special Counsel, Division of Market Oversight, Commodity Futures Trading Commission, Washington, DC 20581, at (202) 418.5133.

SUPPLEMENTARY INFORMATION: The Commission is adopting Part 44 to its Regulations under the Commodity Exchange Act as an interim final rule and is soliciting comment on all aspects of the rule. The Commission will carefully consider all comments received and will address them, where applicable, in connection with the permanent reporting rules required to be adopted by the Dodd-Frank Act.

I. Background

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[3] Title VII of the Dodd-Frank Act[4] amended the Commodity Exchange Act ("CEA")[5] to establish a comprehensive new regulatory framework for swaps and security-based swaps. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating robust recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to, among others, all registered entities and intermediaries subject to the Commission's oversight.

Among other things, the Dodd-Frank Act requires that swaps be reported to a registered SDR or to the Commission if there is no registered SDR that would accept the swap. Section 723 of the Dodd-Frank Act adds Section 2(h)(5) to the CEA to require that pre-enactment swaps be reported to a registered SDR or to the Commission no later than 180 days after the effective date of that subsection.[6] By its terms, the effectiveness of this rule is governed by the effective date of the Dodd-Frank Act—July 16, 2011. Section 729 of the Dodd-Frank Act establishes, in new Section 4r of the CEA, reporting requirements that will remain in effect until the effective date of the permanent reporting rules to be adopted by the Commission pursuant to Section 2(h)(5) of the CEA.

Section 4r(a)(1) of the CEA, as amended, provides generally that each swap that is not accepted for clearing by any derivatives clearing organization ("DCO") must be reported to a swap data repository ("SDR") registered in accordance with new Section 21 of the CEA[7] or, where there is no SDR that would accept the swap, to the Commission within the time period prescribed by the Commission. Section 4r(a)(2) specifies that each swap entered into before the date of enactment of the Dodd-Frank Act, the terms of which had not expired by the date of enactment of that Act, must be reported to a registered SDR or to the Commission, and directs the Commission to promulgate, within 90 days of enactment of the Dodd-Frank Act, an interim final rule providing for the reporting of such swaps. Section 4r(a)(2)(A) directs that such swaps be reported by a date not later than (i) 30 days after issuance of the interim final rule; or (ii) such other period as the Commission determines to be appropriate.

Consistent with this mandate, the Commission is adopting, in new Part 44 of the Commission's regulations, Rule 44.02 to (i) establish a reporting time frame for unexpired pre-enactment swaps that is no later than 60 days from the date the appropriate SDR is registered with the Commission or by the compliance date established in the swap reporting rules required by Section 2(h)(5) of the CEA, whichever comes first; and (ii) require that counterparties specified in Section 4r(a)(3) report information concerning pre-enactment unexpired swaps to the Commission on request during the interim period. Finally, the Commission is specifying in an interpretive note ("Note") to Rule 44.02(a) the information the Commission believes reporting entities should retain in order to comply with the reporting obligations in the rule.

II. The Interim Final Rule

A. Reconciling the Relevant Statutory Provisions

Sections 723 and 729 of the Dodd-Frank Act establish requirements for the reporting of pre-enactment swaps to SDRs or to the Commission; each provides generally that swaps must be reported pursuant to such rules or regulations as the Commission prescribes. Section 729 provides that swaps entered into prior to the July 21, 2010 enactment date and outstanding on

[2] 17 CFR 145.9.

[3] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010), hereinafter cited as "Dodd-Frank Act." The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[4] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[5] 7 U.S.C. 1 *et seq.*

[6] "(5) Reporting Transition Rules.—Rules adopted by the Commission under this section shall provide for the reporting of data, as follows:

(A) Swaps entered into on or before the date of the enactment of this subsection shall be reported to a registered swap data repository or the Commission no later than 180 days after the effective date of this subsection.

(B) Swaps entered into on or after such date of enactment shall be reported to a registered swap data Repository or the Commission no later than the later or—

(i) 90 days after such effective date; or such other time after entering into the swap as the Commission may prescribe by rule or regulation.

[7] Section 21, added by Section 728 of the Dodd-Frank Act, requires that SDRs directly or indirectly making use of the mails or any means or instrumentality of interstate commerce to perform the functions of an SDR be registered with the Commission, and establishes statutory duties applicable to registered SDRs.

that date (hereafter "pre-enactment unexpired swaps") must be reported to a registered SDR or the CFTC not later than 30 days after the CFTC issues an interim final rule [8] or such other period determined by the CFTC. Section 723 similarly provides that the Commission must promulgate a rule that pre-enactment swaps must be reported to a registered SDR not later than 180 days after the effective date of the subsection.[9] The inconsistencies between these two reporting provisions must be reconciled in order to eliminate uncertainty with respect to the actual reporting requirements for pre-enactment swaps.

1. Section 729

Section 4r(a)(1) of the CEA, added by section 729 of the Dodd-Frank Act, provides generally that each swap that is not accepted for clearing by any DCO must be reported to an SDR described in new Section 21 of the CEA or, in the case where there is no SDR that would accept the swap,[10] to the Commission within the time period prescribed by the Commission. Specifically, pre-enactment swaps must, pursuant to new CEA Section 4r(a)(2)(A), be reported to a registered SDR, or to the Commission if no SDR would accept the swap, by a date that is not later than 30 days after the issuance of the interim final rule prescribed in new Section 4r(a)(2)(B) [11] or such other period as the Commission determines to be appropriate. Section 4r(a)(3) delineates the reporting obligations of the parties in specific circumstances.[12]

2. Section 723

Section 723 of the Dodd-Frank Act adds to the CEA new Section 2(h)(5), which similarly requires that the Commission adopt a reporting transition rule for swaps entered into before the date of enactment of that subsection. Section 2(h)(5) provides that such swaps shall be reported to a registered SDR or to the Commission no later than 180 days after the effective date of that subsection—or approximately 540 days after the date of enactment.

3. Legislative Intent

In a July 15, 2010 floor statement, Senator Lincoln addressed the inconsistencies between Sections 2(h)(5) and 4r(a)(2)(A) and emphasized that the provisions of these two sections "should be interpreted as complementary to one another to assure consistency between them. This is particularly true with respect to issues such as the effective dates of these reporting requirements * * *."[13]

B. Scope and Coverage of the Interim Final Rule

As noted, new Section 2(h)(5) does not contain the same qualifying language found in Section 4r(a)(2)(A), which limits the swaps that must be reported to pre-enactment swaps whose terms have not expired as of the date of enactment. In the Commission's view, failure to limit the term "pre-enactment swaps" to "pre-enactment unexpired swaps" would require reporting of every swap that has ever been entered into.[14] There are obvious practical and operational difficulties in an interpretation that imposes reporting requirements on expired swaps: counterparties may not have kept thorough, complete—or indeed any—records of such transactions. Moreover, the argument can be made that a swap whose terms have expired is no longer a swap as defined in the Dodd-Frank Act. For these reasons, the Commission believes that the trades described in Section 2(h)(5) should be viewed as consistent with those described in Section 4r(a)(2); that is, limited to those pre-enactment trades whose terms had not expired at the time of enactment—*i.e.,* July 21, 2010.

1. Reporting Obligations

Rule 44.02(a) requires that the designated counterparty to a pre-enactment unexpired swap transaction [15] submit, with respect to such transaction, the following information to a registered SDR or to the Commission: (i) A copy of the transaction confirmation in electronic form, if available, or in written form if there is no electronic copy; and (ii) if available, the time the transaction was executed. In addition, Rule 44.02(b) provides that a counterparty to a pre-enactment unexpired swap transaction must report to the Commission on request any information relating to such transaction during the time that this interim final rule is in effect. The Commission expects that such information would vary depending upon the needs of the Commission and may include actual as well as summary trade data. Such summary data may include a description of a swap dealer's counterparties or the total number of pre-enactment swap transactions entered into by the dealer and some measure of the frequency and duration of those contracts. The Commission believes that this requirement will facilitate its ability to understand and evaluate the current market for swaps and may inform its analysis of other required rulemakings under the Dodd-Frank Act.

2. Reporting Party

Section 4r(a)(3) of the CEA specifies the party obligated to report a swap transaction: either a swap dealer, a major swap participant, or a counterparty to the transactions. These provisions apply to reporting under the interim final rule. Specifically, Section 4r(a)(3) provides, with respect to a swap in which only one counterparty is a swap dealer or major swap participant, it is that entity's responsibility to report the swap. With respect to a swap in which one counterparty is a swap dealer and the other counterparty is a major swap participant, the swap dealer must report the swap; with respect to any other swap, the counterparties shall select one of them to report the swap. Rule 44.02(b) incorporates these provisions.

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[8] The interim final rule must be promulgated within 90 days of enactment of the Dodd-Frank Act. *See* Section 4r(a)(2)(B).

[9] Section 774 of the Dodd-Frank Act describes the effective date as follows: "unless otherwise provided," the provisions of Title VII shall take effect "on the later of 360 days after the date of enactment" or to the extent that a provision of Title VII requires a rulemaking, "not less than 60 days after publication of the final rule or regulation implementing" such provision of Title VII.

[10] The Commission believes that this circumstance might occur where no SDR has yet been approved or where no SDR has been approved for a particular asset class. In addition, it is conceivable that an SDR's system might not be equipped to accept a particular bespoke swap transaction.

[11] Section 4r(a)(2)(B) provides that "[t]he Commission shall promulgate an interim final rule within 90 days of the date of enactment of this section providing for the reporting of each swap entered into before the date of enactment as referenced in subparagraph (A)." *See* Section 729 of the Dodd-Frank Act.

[12] For swaps in which only one counterparty is a swap dealer or major swap participant, that swap dealer or major swap participant shall report the swap (Section 4r(3)(A)); where one counterparty is a swap dealer and the other is a major swap participant, the swap dealer shall report the swap (Section 4r(3)(B)). With respect to any other swap not described in subsections (A) and (B), the counterparties to the swap shall select a counterparty to report the swap (Section 4r(a)(3)(C)).

[13] Lincoln, "Wall Street Transparency and Accountability," *Congressional Record* (July 15, 2010) at S5923.

[14] Financial historians believe that the first swap transaction was executed between the World Bank and IBM Corporation in 1981. *See* Paul C. Harding, *Mastering the ISDA Master Agreements (1992 and 2002)* (FT Prentice Hall, 3d Ed. 2010) at 9. As noted in the text accompanying this footnote, the operational difficulties in requiring reporting of all swaps executed since 1981 could be substantial, and the cost in terms of technology and human capital resources would far outweigh any potential benefits for swaps that have expired.

[15] The reporting obligations of specified counterparties are delineated in Section 4r(a)(3) of the CEA, as amended.

3. Effective Date for Reporting Pre-Enactment Unexpired Swaps

New CEA Section 4r(a)(2)(C) establishes that the reporting provisions of section 4r are effective immediately upon enactment of the Dodd-Frank Act, despite the fact that at this time (i) there are no registered SDRs to immediately accept the swap data; (ii) the Commission is not prepared to accept swap data; and (iii) the Commission has not adopted rules governing either the registration of swap dealers or major swap participants or the reporting and maintenance of such data and is not required to do so until 360 days after enactment of the Dodd-Frank Act.[16] In these circumstances, Section 4r should be read to require that the reporting obligation became effective on enactment of the Dodd-Frank Act and that counterparties who are subject to this obligation should, as of the date of enactment, retain all data relating to pre-enactment unexpired swaps until such time as reporting can be effected—*e.g.,* when swap dealers and major swap participants, as well as the appropriate SDRs, have been registered, or when permanent regulations are enacted pursuant to Section 2(h)(5) of the CEA, whichever occurs first.

4. Record Retention

The pre-enactment swap transactions that must be reported pursuant to Section 4r of the CEA, as amended, and the new interim final rule (Part 44 of the Commission's Regulations) occurred prior to enactment of the Dodd-Frank Act. Accordingly, implicit in the reporting requirements established by Section 4r and Rule 44 is the obligation of each counterparty to such transactions to retain information and documents relating to the terms of the transaction. Rule 44.02 includes a Note to paragraphs (a)(1) and (2) advising counterparties to a pre-enactment unexpired swap that may be required to report such transaction to retain in its existing format all information and documents, to the extent and in such form as they presently exist, relating to the terms of the transaction. This information includes, but is not limited to: (i) Any information necessary to identify and value the transaction; (ii) the date and time of execution of the transaction; (iii) information relevant to the price of the transaction; (iv) whether the transaction was accepted for clearing by any clearing agency or derivatives clearing organization, and if so the identity of such agency or organization; (v) any modification(s) to the terms of the transaction; and (vi) the final confirmation of the transaction. The Commission believes that counterparties that may be required to report such transactions should retain such information in order to comply with the reporting requirements of Rule 44.02. The information identified above and in the Note is designed to encompass material information about pre-enactment unexpired swap transactions that may be the subject of a request by the Commission to report pursuant to the interim final rule, as well as rules subsequently adopted pursuant to new Section 2(h)(5) of the CEA, and that will assist the Commission in performing its oversight functions under the CEA.

The Note does not require any counterparty to a pre-enactment unexpired swap to create or retain new records with respect to transactions that occurred in the past. Permitting records to be retained in their existing format is designed to ensure that important information relating to the terms of pre-enactment unexpired swaps is preserved with minimal burden on the counterparties. Similarly, the Commission understands that information that the counterparty does not have prior to the effective date of the interim final rule cannot be reported.

III. Related Matters

A. Administrative Procedure Act

The Administrative Procedure Act[17] ("APA") generally requires an agency to publish notice of a proposed rulemaking in the **Federal Register**.[18] This requirement does not apply, however, when the agency "for good cause finds * * * that notice and public procedure are impracticable, unnecessary, or contrary to the public interest."[19] Moreover, while the APA requires generally that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective, this requirement does not apply if the agency finds good cause to make the rule effective sooner.[20] Section 729 of the Dodd-Frank Act amended the CEA to add new Section 4r, which in turn requires the Commission to adopt, within 90 days of enactment of the Dodd-Frank Act, an interim final rule providing for the reporting of swaps entered into before the date of enactment of the Dodd-Frank Act the terms of which were not expired as of that date. The Commission is adopting Part 44 to its Regulations in response to this mandate. In these circumstances, the Commission, for good cause, fines that notice and solicitation is impracticable, unnecessary or contrary to the public interest. This finding also satisfies the requirements of 5 U.S.C. 808(2), permitting the rule to become effective notwithstanding the requirement of 5 U.S.C. 801 (if a federal agency finds that notice and public comment are "impractical, unnecessary or contrary to the public interest," a rule "shall take effect at such time as the federal agency promulgating the rule determines.").

B. Paperwork Reduction Act

1. Reporting Requirements

The Commission has determined that these proposed orders will not impose on swap counterparties any new reporting requirements that would be collections of information requiring the approval of the Office of Management and Budget under the Paperwork Reduction Act.[21] The reporting requirements associated with Section 723 of the Dodd-Frank Act will be adopted by the Commission, at which time the Commission will issue a notice and request comments on the reporting requirements and seek OMB approval as provided by 5 CFR 1320.8 and 1320.11.

2. Recordkeeping Requirements

Proposed Commission Regulation 44.02 imposes a recordkeeping requirement on swap counterparties that is considered to be a collection of information within the meaning of the Paperwork Reduction Act ("PRA").[22] The Commission therefore is required to submit to the Office of Management and Budget (OMB) an information collection request for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.8 an d1320.11. The Commission will, by separate action, publish in the **Federal Register** a notice and request for comments on the paperwork burden associated with these recordkeeping requirements in accordance with 5 CFR 1320.8. If approved, this new collection of information will be mandatory.

C. Cost-Benefit Analysis

Section 15 of the CEA requires the Commission to consider the costs and

[16] Section 2(h)(5) does not specify an effective date. In these circumstances, the "default" effective date would be 360 days after enactment of the Dodd-Frank Act or 60 days after publication of a final rule or regulation. Adoption of the effective date prescribed in Section 2(h)(5) permits the implementation of Section 4r and achieves Senator Lincoln's goal of assuring consistency between the two legislative provisions embodied in Sections 4r and 2(h)(5).

[17] 5 U.S.C. 553.

[18] 5 U.S.C. 553(b).

[19] *Id.*

[20] 5 U.S.C. 553(d).

[21] 44 U.S.C. 3501 *et seq.*

[22] 44 U.S.C. 3501 *et seq.*

benefits of its action before issuing a new regulation or order under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of its action or to determine whether the benefits of the action outweigh its costs. Rather, Section 15(a) requires the Commission simply to "consider the costs and benefits" of the subject rule or order. Section 15(a) further specifies that the costs and benefits of Commission regulations shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of the market for listed derivatives; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may, in its discretion, give greater weight to any one of the five enumerated areas of concern and may, in its discretion, determine that notwithstanding its costs, a particular regulation is necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

Title VII of the Dodd-Frank Act requires the Commission to undertake a number of rulemakings to implement the regulatory framework for swaps set forth in that Act, including the reporting of swap transactions. This interim final rule implements the Dodd-Frank Act by establishing reporting requirements for pre-enactment unexpired swaps as required by Section 729 of that Act and serving as notice to reporting entities of a present obligation to retain data related to such swaps for reporting at a future date. The rule will enable the Commission to obtain data on pre-enactment swaps and will also provide for the preservation of data on such swaps until the Commission issues permanent recordkeeping and reporting rules for all swaps. By making available transaction data on pre-enactment swaps, this action will enable the Commission to gain a better understanding of the swap market—including the size and scope of that market; this understanding will ultimately lead to a more robust and transparent environment for the market for swaps. Further, the Commission expects this rule to make available information that could inform the Commission's decision-making with respect to the rules it is required to implement under the Dodd-Frank Act.

The Note to Rule 44.02(a)(1) and (2) addresses the retention of records relating to swaps entered into before July 21, 2010, the terms of which had not expired as of that date. Although there are recordkeeping costs associated with retention of existing swap transaction information, the Commission does not believe those costs will be significant. The rule does not require market participants to modify the data they have for retention purposes, and the information that is required to be reported should be information that is already kept by swap counterparties in their normal course of business, and it may be reported in the format in which it is kept. Moreover, counterparties must report the time of execution only to the extent such information is available.

The permanent reporting rules that the Commission is required to adopt under new CEA Section 2(h)(5) also will apply to pre-enactment swaps. Accordingly, in adopting this interim final rule, the Commission has sought to limit the burden on market participants by not imposing substantial or potentially conflicting reporting requirements.

D. The Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.,* requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. The term "rule" under the RFA is defined as "any rule for which the agency publishes a general notice of proposed rulemaking pursuant to Section 553(B) of this title, or any other law * * *."[23] However, a general notice of proposed rulemaking under Section 553(b) does not apply "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules [issued] that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest."[24] Congress in Section 4r(a)(2)(B) of the CEA directs the Commission to promulgate an interim final rule within 90 days of enactment of the Dodd-Frank Act to require the reporting of unexpired pre-enactment swaps. The Commission believes that the RFA does not apply to this interim final rule because "good cause" under 5 U.S.C. 553(b) has been established by specific order of Congress in the Dodd-Frank Act.

List of Subjects in 17 CFR Part 44

Swap markets, Counterparties, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, and pursuant to the authority in the Commodity Exchange Act, as amended, and in particular Section 4r (a)(2) of the Act, the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulation by adding a new Part 44 as follows:

PART 44—INTERIM FINAL RULE FOR PRE-ENACTMENT SWAP TRANSACTIONS

Sec.

44.00 Definition of terms used in Part 44 of this chapter.
44.01 Effective date.
44.02 Reporting pre-enactment swaps to a swap data repository or the Commission.

Authority: 7 U.S.C. 2(h)(5), 4r, and 12a(5), as amended by Title VII of the Wall Street Reform and Consumer Protection Act (Dodd-Frank Act of 2010), Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 44.00 Definition of terms used in Part 44 of this chapter.

(a) *Major swap participant* shall have the meaning provided in Section 1a(33) of the Commodity Exchange Act, as amended, and any rules or regulations thereunder.

(b) *Pre-enactment unexpired swap* means any swap entered into prior to the enactment of the Dodd-Frank Act of 2010 (July 21, 2010) the terms of which had not expired as of the date of enactment of that Act;

(c) *Reporting entity,* when used in this Part, means any counterparty referenced or identified in Section 4r(a)(3)(A)–(C) of the Commodity Exchange Act, as amended;

(d) *Swap Data Repository* shall have the meaning provided in Section 1a(48) of the Commodity Exchange Act, as amended, and any rules or regulations thereunder;

(e) *Swap Dealer* shall have the meaning provided in Section 1(a)(49) of the Commodity Exchange Act, as amended, and any rules or regulations thereunder;

§ 44.01 Effective date.

The provisions of this Part are effective immediately on publication in the Federal Register.

§ 44.02 Reporting pre-enactment swaps to a swap data repository or the Commission.

(a) A counterparty to a pre-enactment unexpired swap transaction shall:

(1) Report to a registered swap data repository or the Commission by the compliance date established in the reporting rules required under Section 2(h)(5) of the Commodity Exchange Act, or within 60 days after a swap data repository becomes registered with the Commission and commences operations to receive and maintain data related to such swap, whichever occurs first, the

[23] 5 U.S.C. 601(2).

[24] 5 U.S.C. 553(b).

following information with respect to the swap transaction:

(i) A copy of the transaction confirmation, in electronic form if available, or in written form if there is no electronic copy; and

(ii) The time, if available, that the transaction was executed; and

(2) Report to the Commission on request, in a form and manner prescribed by the Commission, any information relating to the swap transaction.

Note to Paragraphs (a)(1) and (a)(2). In order to comply with the reporting requirements contained in paragraph (a)(1) and (a)(2) of this section, each counterparty to a pre-enactment unexpired swap transaction that may be required to report such transaction should retain, in its existing format, all information and documents, to the extent and in such form as they presently exist, relating to the terms of a swap transaction, including but not limited to any information necessary to identify and value the transaction; the date and time of execution of the transaction; information relevant to the price of the transaction; whether the transaction was accepted for clearing and, if so, the identity of such clearing organization; any modification(s) to the terms of the transaction; and the final confirmation of the transaction.

(b) *Reporting party.* The counterparties to a swap transaction shall report the information required under paragraph (a) of this section as follows:

(1) Where only one counterparty to a swap transaction is a swap dealer or a major swap participant, the swap dealer or major swap participant shall report the transaction;

(2) Where one counterparty to a swap transaction is a swap dealer and the other counterparty is a major swap participant, the swap dealer shall report the transaction; and

(3) Where neither counterparty to a swap transaction is a swap dealer or a major swap participant, the counterparties to the transaction shall select the counterparty who will report the transaction.

By the Commission.

Dated: October 1, 2010.

David A. Stawick,

Secretary.

[FR Doc. 2010–25325 Filed 10–13–10; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

[Docket No. FDA–2010–N–0002]

Certain Other Dosage Form New Animal Drugs; Progesterone Intravaginal Inserts

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pharmacia & Upjohn Co., a Division of Pfizer, Inc. The supplemental NADA provides for use of progesterone intravaginal inserts and dinoprost tromethamine by injection for synchronization of estrus in lactating dairy cows.

DATES: This rule is effective October 14, 2010.

FOR FURTHER INFORMATION CONTACT: Suzanne J. Sechen, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8105, *e-mail: suzanne.sechen@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pharmacia & Upjohn Co., a Division of Pfizer, Inc., 235 East 42d St., New York, NY 10017 filed a supplement to NADA 141–200 that provides for use of EAZI–BREED CIDR Progesterone Intravaginal Inserts and dinoprost tromethamine by injection for synchronization of estrus in lactating dairy cows. The NADA is approved as of July 22, 2010, and the regulations are amended in 21 CFR 529.1940 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning on the date of approval.

The agency has determined under 21 CFR 25.33 that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 529

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 529.1940, revise paragraphs (d)(2) and (e)(1) and remove the last sentence in paragraph (e)(2)(iii) to read as follows:

§ 529.1940 Progesterone intravaginal inserts.

* * * * *

(d) * * *

(2) *Cows.* This product is approved with the concurrent use of dinoprost solution when used for indications listed in paragraphs (e)(1)(ii)(A) and (e)(1)(ii)(B) of this section. *See* § 522.690(c) of this chapter.

(e) * * *

(1) *Cows*—(i) *Amount.* Administer one intravaginal insert per animal for 7 days. When used for indications listed in paragraph (e)(1)(ii)(A) of this section, administer 25 milligrams (mg) dinoprost (5 milliliters (mL) of 5 mg/mL solution as in § 522.690(a) of this chapter) as a single intramuscular injection 1 day prior to insert removal (Day 6). When used for indications listed in paragraph (e)(1)(ii)(B) of this section, administer 25 mg dinoprost as a single intramuscular injection on the day of insert removal (Day 7).

(ii) *Indications for use*—(A) For synchronization of estrus in suckled beef cows and replacement beef and dairy heifers; for advancement of first postpartum estrus in suckled beef cows; and for advancement of first pubertal estrus in replacement beef heifers.

(B) For synchronization of estrus in lactating dairy cows.

(C) For synchronization of the return to estrus in lactating dairy cows

inseminated at the immediately preceding estrus.

(iii) *Limitations.* Do not use in beef or dairy heifers of insufficient size or age for breeding or in animals with abnormal, immature, or infected genital tracts. Do not use in beef cows that are fewer than 20 days postpartum. Do not use an insert more than once. To prevent the potential transmission of venereal and bloodborne diseases, the inserts should be disposed after a single use. Administration of vaginal inserts for periods greater than 7 days may result in reduced fertility. Dinoprost solution provided by No. 000009 in § 510.600(c) of this chapter.

* * * * *

Dated: October 8, 2010.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 2010–25893 Filed 10–13–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2010–0912]

Drawbridge Operation Regulations; Duluth Ship Canal (Duluth-Superior Harbor).

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Commander, Ninth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Duluth Ship Canal Aerial Bridge at Mile 0.1 over the Duluth Ship Canal, at Duluth, MN, for scheduled maintenance. During this temporary deviation the bridge will be secured to masted navigation. Vessels that can pass under the bridge without an opening may do so at any time.

DATES: This deviation is effective from 6 a.m. on January 14, 2011 to 10 a.m. on March 14, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0912 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0912 in the "Keyword" box and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, e-mail; *lee.d.soule@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The City of Duluth, MN, who owns and operates this drawbridge, has requested a temporary deviation from the current operating regulations set forth in 33 CFR 117.661. The purpose of this request is to facilitate structural maintenance of the bridge superstructure. The bridge is normally required to open if at least 24 hours advance notice is provided during the scheduled maintenance period. Vessels that can pass under the bridge without an opening may do so at any time. The bridge has a horizontal clearance of 300 feet and a vertical clearance of 15 feet in the closed position. Mariners that require passage between the harbor and Lake Superior with an air draft greater than 15 feet may use the Superior Entrance Channel, Superior, Wisconsin at any time. Impact to masted navigation is mitigated by the close proximity of an alternate route and the reduced navigational needs in the harbor during the winter. The most updated and detailed marine information for this event, and all bridge operations, is found in the Local Notice to Mariners and Broadcast Notice to Mariners issued by the Coast Guard. From 6 a.m. on January 14, 2011 to 10 a.m. on March 14, 2011 the bridge need not open for any vessel. In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 28, 2010.

Scot M. Striffler,

Bridge Program Manager, Ninth Coast Guard District.

[FR Doc. 2010–25805 Filed 10–13–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0873]

RIN 1625–AA00

Great Mississippi Balloon Race and Fireworks Safety Zone; Lower Mississippi River, Mile Marker 365.5 to Mile Marker 363, Natchez, MS

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River from mile marker 365.5 to 363 extending the entire width of the river. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with a fireworks display and low flying hot air balloons transiting across the Lower Mississippi River. Entry into this zone is prohibited to all vessels, mariners, and persons unless specifically authorized by the Captain of the Port (COTP) Lower Mississippi River or a designated representative. The COTP Lower Mississippi River or a designated representative must authorize vessels that desire to operate in this zone.

DATES: This rule is effective from 7:15 p.m. on October 15, 2010, until 6 p.m. on October 16, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0873 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0873 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Lieutenant Junior Grade Jason Erickson, Coast Guard; telephone 901–521–4753, e-mail *Jason.A.Erickson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule. Publishing an NPRM would be impracticable in this situation because immediate action is needed to protect the participants in the fireworks display, spectators, and mariners from the safety hazards associated with a fireworks display and low flying hot air balloons transiting over a confined waterway.

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**. This is because immediate action is needed to protect the participants in the fireworks display, spectators, and mariners from the safety hazards associated with a fireworks display and low flying hot air balloons transiting over a confined waterway.

Basis and Purpose

On September 13, 2010, the Coast Guard received an Application for Approval of Marine Event for a fireworks display and a hot air balloon race on the Lower Mississippi River. This safety zone is needed to protect participants, spectators, and other mariners from the possible hazards associated with a fireworks show and hot air balloon race taking place on the Lower Mississippi River. The fallout zone extends into the navigable channel of the river.

Discussion of Rule

The Coast Guard is establishing a temporary safety zone for the Mississippi River, extending from mile marker 363 to mile marker 365.5. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Lower Mississippi River or a designated representative.

The Captain of the Port may be contacted by telephone at (901) 521–4822. This rule will be enforced from 7:15 p.m. until 8:45 p.m., local time, on October 15, 2010 and from 4:15 p.m. until 6 p.m., local time, on October 16, 2010.

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.

This regulation will only be in effect for a short period of time on both days and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

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 will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit the Lower Mississippi River between mile marker 363 and mile marker 365.5, effective from 7:15 p.m. to 8:45 p.m., local time, on October 15, 2010 and 4:15 p.m. to 6 p.m., local time, on October 16, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for two hours on each day the event is occurring. In addition, the common vessel traffic in this area is limited almost entirely to recreational vessels and commercial towing vessels.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 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 that 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 a fireworks display that is not expected to result in any significant adverse environmental impact as described in NEPA.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary § 165.T08–0873 is added to read as follows:

§ 165.T08–0873 Great Mississippi Balloon Race and Fireworks Safety Zone; the Mississippi River, extending from mile marker 363 to mile marker 365.5, in the vicinity of Natchez, MS.

(a) *Location.* The following area is a safety zone: those waters of the Lower Mississippi River, beginning at mile marker 363 and ending at mile marker 365.5, extending the entire width of the river.

(b) *Enforcement Period.* This section will be enforced from 7:15 p.m. to 8:45 p.m., local time, on October 15, 2010 and from 4:15 p.m. to 6 p.m., local time, on October 16, 2010.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Lower Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Lower Mississippi River or a designated representative. They may be contacted on VHF–FM channels 16 or by telephone at (901) 521–4822.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Lower Mississippi River and designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(d) *Informational Broadcasts.* The Captain of the Port, Lower Mississippi River will inform the public when safety zones have been established via Broadcast Notice to Mariners.

Dated: September 16, 2010.

Michael Gardiner,

Captain, U.S. Coast Guard, Captain of the Port, Lower Mississippi River.

[FR Doc. 2010–25804 Filed 10–13–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[Docket No. FWS–R7–SM–2009–0052; 70101–1261–0000L6]

RIN 1018–AW77

Subsistence Management Regulations for Public Lands in Alaska, Subpart B; Special Actions

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

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that manage the taking of wildlife and fish in Alaska for subsistence purposes. In particular, the Federal Subsistence Board's (Board) process of accepting and addressing special action requests is clarified, along with the role of the Regional Advisory Councils in the special action process.

Public notice requirements are updated to bring them in alignment with the practices of the digital age and accommodate the new biennial regulatory cycle.

DATES: This rule is effective October 14, 2010.

ADDRESSES: The Board meeting transcripts are available for review at the Office of Subsistence Management, 1011 East Tudor Road, MS 121, Anchorage, AK 99503, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/index.cfml*).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 743–9461 or *skessler@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program (Program). This Program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries first published regulations to carry out this Program in the **Federal Register** on May 29, 1992 (57 FR 22940). These regulations have subsequently been amended several times. Because this Program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, "Parks, Forests, and Public Property," and Title 50, "Wildlife and Fisheries," at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; subpart B, Program Structure; subpart C, Board Determinations; and subpart D, Subsistence Taking of Fish and Wildlife.

Consistent with subpart B of these regulations, the Secretaries established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board is made up of:

- A Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- The Alaska Regional Director, U.S. Fish and Wildlife Service;
- The Alaska Regional Director, U.S. National Park Service;
- The Alaska State Director, U.S. Bureau of Land Management;
- The Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- The Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which set forth the basic program, and the subpart D regulations, which, among other things, set forth specific harvest seasons and limits.

In administration of the Program, Alaska is divided into 10 subsistence resource regions, each of which is represented by a Regional Advisory Council. The Regional Advisory Councils provide a forum for rural residents with personal knowledge of local conditions and resources to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Regional Advisory Council members represent diverse geographical, cultural, and user interests within each region.

Members of the regional councils, agency representatives, and the public expressed concern to the Federal Subsistence Board that 36 CFR 242.19 and 50 CFR 100.19, respectively, needed to be revised in a manner that provided more clarity to the Board's process of accepting and addressing special action requests. Special actions are actions that the Board takes to modify the take of fish and wildlife regulations on public lands, outside of the regulatory proposal period, to ensure the continued viability of a fish or wildlife population or for other reasons. These actions may include closing, opening, or adjusting the seasons; modifying the harvest limits; or modifying the methods and means of harvest for subsistence uses of fish and wildlife.

The problem with the lack of clarity in the regulations became particularly apparent during oral argument in the case of *Ninilchik Traditional Council* v. *Fleagle,* when the presiding judge struggled to interpret the procedural mechanisms described in the regulation and criticized it for being unclear. More recently, we recognized the need to modify § __.19 to accommodate the programmatic shift to a biennial regulatory cycle.

Current Rule

The Secretaries published a proposed rule on October 14, 2009 (74 FR 52712), to amend subpart B, §§ __.10, __.18, and __.19 of 36 CFR 242 and 50 CFR 100.

These modifications will:

(1) Improve clarity with respect to the Board's process of accepting and addressing special action requests;

(2) Update public notice requirements and bring them into line with the practices of the digital age;

(3) Bring clarity to the role of the regional councils with respect to special action requests; and

(4) Accommodate the biennial regulatory cycle, which was implemented in 2008 (73 FR 35726; June 24, 2008).

These regulatory revisions will result in no direct change to subsistence uses or fish and wildlife populations, but clarify the process by which special action requests are accepted or rejected by the Board. The proposed rule opened a comment period, which closed on January 12, 2010. The Departments advertised the proposed rule by mail, radio, and newspaper.

The Secretaries, through the Board, held a public meeting on January 12, 2010, to receive comments from Regional Advisory Council Chairs, or designated representatives, and the public. The Board met again on April 13, 2010, to review and formulate a recommendation to the Secretaries.

Public Review and Comment

During the public comment period, the Secretaries received two comments, one from a State advisory commission and a second from a private organization. At the public meeting on January 12, 2010, the Secretaries, through the Board, received four comments, two from two separate sporting organizations, one from a Native organization, and one from the State. In addition, the Regional Advisory Council Chairs were provided the opportunity to comment to the Board. The major comments from all sources are addressed below:

Comment: The proposed rule wrongly expands the authority of the Board under ANILCA into regulating nonsubsistence uses on Federal public lands thereby infringing on sovereign State authority.

Response: The Secretaries hold the position that they have the authority to open, close, restrict, or modify nonsubsistence uses, as needed, in the taking of fish and wildlife on Federal public lands. Due to possible misinterpretation, the Secretaries decided to remove the phrase "* * * or otherwise modify the requirements regarding the taking of fish and wildlife on public lands for nonsubsistence uses." from the language presented in the proposed rule.

Comment: The proposed rule needs to address specific conditions for

reopening an area for nonsubsistence use.

Response: Under direction from the Secretaries, the Board adopted a policy on closures to hunting, trapping and fishing on Federal public lands and waters in Alaska on August 29, 2007. This policy addresses in detail the removal of closures on Federal public lands and waters and was approved by the Secretaries prior to being adopted by the Board.

Comment: The proposed rule does not provide deference to the Regional Advisory Councils in consideration of special actions.

Response: The Secretaries address the Board's deference to the Regional Advisory Councils in 36 CFR 242.10(e) and 50 CFR 100.10(e), "Federal Subsistence Board; "Relationship to Regional Councils". It is further addressed in the Board's closure policy of August 29, 2007.

Comment: The proposed rule does not clarify the State's role in regard to Federal determinations that affect the State's management responsibilities for fish and wildlife when implementing special actions.

Response: The relationship between the Board and the State is defined in 36 CFR 242.14 and 50 CFR 100.14, "Relationship to State procedures and regulations". In addition, the Memorandum of Understanding signed on December 5, 2008, between the Board and the State established guidelines to coordinate the management of subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska.

These final regulations reflect Secretarial review and consideration of the Federal Subsistence Board recommendation and Regional Advisory Council and public comments. The public received extensive opportunity to review and comment on all changes.

Analysis and justification for the action taken are available for review at the Office of Subsistence Management, 1011 East Tudor Road, Mail Stop 121, Anchorage, Alaska 99503, or on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/index.cfml*).

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act Compliance

The Secretaries have provided extensive opportunity for public input and involvement in compliance with Administrative Procedure Act requirements, including publishing a proposed rule notice in the **Federal Register**, participation in multiple Regional Council meetings, additional public review and comment on proposed regulatory changes, and opportunity for additional public comment during the Board meeting prior to their recommendation to the Secretaries.

Therefore, the Secretaries finds good cause pursuant to 5 U.S.C. 553(d)(3) to make this rule effective upon the date set forth in **DATES** to ensure continued operation of the subsistence program.

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analyses and examined the environmental consequences of four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for a regulatory cycle regarding subsistence hunting and fishing regulations (subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comments received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, implemented Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of a regulatory cycle for subsistence hunting and fishing regulations. The final rule for subsistence management regulations for public lands in Alaska, subparts A, B, and C, implemented the Federal Subsistence Management Program and included a framework for a regulatory cycle for the subsistence taking of wildlife and fish. The following **Federal Register** documents pertain to this rulemaking:

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE

Federal Register citation	Date of publication	Category	Details
57 FR 22940	May 29, 1992	Final rule	"Subsistence Management Regulations for Public Lands in Alaska; Final Rule" was published in the **Federal Register**.
64 FR 1276	January 8, 1999	Final rule	Amended the regulations to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. Extended the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act and the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or to an Alaska Native Corporation. Specified and clarified the Secretaries' authority to determine when hunting, fishing, or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority.
66 FR 31533	June 12, 2001	Interim rule	Expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings.

SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A, B, AND C: FEDERAL REGISTER DOCUMENTS PERTAINING TO THE FINAL RULE—Continued

Federal Register citation	Date of publication	Category	Details
67 FR 30559	May 7, 2002	Final rule	Amended the operating regulations in response to comments on the June 12, 2001, interim rule. Also corrected some inadvertent errors and oversights of previous rules.
68 FR 7703	February 18, 2003	Direct final rule	Clarified how old a person must be to receive certain subsistence use permits and removed the requirement that Regional Councils must have an odd number of members.
68 FR 23035	April 30, 2003	Affirmation of direct final rule.	Because no adverse comments were received on the direct final rule (68 FR 7703), the direct final rule was adopted.
69 FR 60957	October 14, 2004 ..	Final rule	Clarified the membership qualifications for Regional Advisory Council membership and relocated the definition of "regulatory year" from subpart A to subpart D of the regulations.
70 FR 76400	December 27, 2005.	Final rule	Revised jurisdiction in marine waters and clarified jurisdiction relative to military lands.
71 FR 49997	August 24, 2006	Final rule	Revised the jurisdiction of the subsistence program by adding submerged lands and waters in the area of Makhnati Island, near Sitka, AK. This allowed subsistence users to harvest marine resources in this area under seasons, harvest limits, and methods specified in the regulations.
72 FR 25688	May 7, 2007	Final rule	Revised nonrural determinations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

An agency may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. This rule does not contain any new collections of information that require OMB approval. OMB has reviewed and approved the following collections of information associated with the subsistence regulations at 36 CFR 242 and 50 CFR 100: Subsistence hunting and fishing applications, permits, and reports, Federal Subsistence Regional Advisory Council Membership Application/ Nomination and Interview Forms (OMB Control No. 1018–0075 expires January 31, 2013).

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination 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 agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that two million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability

of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to 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 governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act does not specifically provide rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, the Secretaries have elected to provide tribes an opportunity to consult on this rule. The Secretaries, through the Board, provided a variety of opportunities for consultation through: proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Advisory Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rulemaking process.

Executive Order 13211

This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. However, this rule is not a significant regulatory action under E.O. 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Dr. Glenn Chen and Patricia Petrivelli, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

■ For the reasons set out in the preamble, the Federal Subsistence Board amends subpart B of part 242 of title 36 and part 100 of title 50 of the Code of Federal Regulations, as set forth below.

PART __—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

■ 1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

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

■ 2. Amend § __.10 by revising paragraph (d)(4)(vi), redesignating paragraphs (d)(4)(vii) through (d)(4)(xix) as paragraphs (d)(4)(viii) through (d)(4)(xx), and adding a new paragraph (d)(4)(vii) to read as follows:

§ __.10 Federal Subsistence Board.

* * * * *

(d) * * *

(4) * * *

(vi) Restrict the taking of fish and wildlife on public lands for nonsubsistence uses or close public lands to the take of fish and wildlife for nonsubsistence uses when necessary for the conservation of healthy populations of fish or wildlife, to continue subsistence uses of fish or wildlife, or for reasons of public safety or administration. The Board may also reopen public lands to nonsubsistence uses if new information or changed conditions indicate that the closure is no longer warranted;

(vii) Restrict the taking of a particular fish or wildlife population on public lands for subsistence uses, close public lands to the take of fish and wildlife for subsistence uses, or otherwise modify the requirements for take from a particular fish or wildlife population on public lands for subsistence uses when necessary to ensure the continued viability of a fish or wildlife population, or for reasons of public safety or administration. As soon as conditions warrant, the Board may also reopen public lands to the taking of a fish and wildlife population for subsistence users to continue those uses;

* * * * *

■ 3. Revise the introductory text of paragraph (a) of § __.18 to read as follows:

§ __.18 Regulation adoption process.

(a) The Board will accept proposals for changes to the Federal subsistence regulations in subparts C or D of this part according to a published schedule, except for proposals for emergency and temporary special actions, which the Board will accept according to procedures set forth in § __.19. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board will develop and publish proposed regulations in the **Federal Register**, publish notice in local newspapers, and distribute comments on the proposed regulations in the form of proposals for public review.

* * * * *

■ 4. Revise § __.19 to read as follows:

§ __.19 Special actions.

(a) *Emergency special actions.* In an emergency situation, if necessary to ensure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons, the Board may immediately open or close public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for take for subsistence uses, or close public lands to take for nonsubsistence uses of fish and wildlife,

or restrict the requirements for take for nonsubsistence uses.

(1) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board may seek Council recommendations on the proposed emergency special action. Such a Council recommendation, if any, will be subject to the requirements of § __.18(a)(4).

(2) The emergency action will be effective when directed by the Board, may not exceed 60 days, and may not be extended unless the procedures for adoption of a temporary special action, as set forth in paragraph (b) of this section, have been followed.

(b) *Temporary special actions.* After adequate notice and public hearing, the Board may temporarily close or open public lands for the taking of fish and wildlife for subsistence uses, or modify the requirements for subsistence take, or close public lands for the taking of fish and wildlife for nonsubsistence uses, or restrict take for nonsubsistence uses.

(1) The Board may make such temporary changes only after it determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on nonsubsistence users. The Board may also reopen public lands to nonsubsistence uses if new information or changed conditions indicate that the closure is no longer warranted.

(i) Prior to implementing a temporary special action, the Board will consult with the State of Alaska and the Chairs of the Regional Councils of the affected regions.

(ii) If the timing of a regularly scheduled meeting of the affected Regional Council so permits without incurring undue delay, the Board will seek Council recommendations on the proposed temporary special action. Such Council recommendations, if any, will be subject to the requirements of § __.18(a)(4).

(2) The length of any temporary action will be confined to the minimum time period or harvest limit determined by the Board to be necessary under the circumstances. In any event, a temporary opening or closure will not extend longer than the end of the current regulatory cycle.

(c) The Board may reject a request for either an emergency or a temporary special action if the Board concludes that there are no time-sensitive circumstances necessitating a regulatory change before the next regular proposal cycle. However, a special action request that has been rejected for this reason may be deferred, if appropriate and after consultation with the proponent, for consideration during the next regular proposal cycle. The Board will consider changes to customary and traditional use determinations in subpart C of this part only during the regular proposal cycle.

(d) The Board will provide notice of all regulatory changes adopted via special action by posting the change on the Office of Subsistence Management Web site (*http://alaska.fws.gov/asm/index.cfml*). When appropriate, notice may also include distribution of press releases to newspapers, local radio stations, and local contacts, as well as direct notification to the proponent and interested parties. The Board will publish notice and reasons justifying the special action in the **Federal Register** as soon as practicable.

(e) The decision of the Board on any proposed special action will constitute its final administrative action.

(f) Regulations authorizing any individual agency to implement closures or restrictions on public lands managed by the agency remain unaffected by the regulations in this part.

(g) Fish and wildlife may not be taken in violation of any restriction, closure, or change authorized by the Board.

Dated: July 13, 2010.

Ken Salazar,

Secretary of the Interior, Department of the Interior.

Beth G. Pendleton,

Regional Forester, USDA—Forest Service.

[FR Doc. 2010–25816 Filed 10–13–10; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2009–0880; FRL–9213–8]

RIN 2050–AG59

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Compliance Date Amendment

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is promulgating a new compliance date of November 10, 2011 by which certain facilities must prepare or amend their Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans, providing an additional year for certain facilities. This action allows additional time for those affected in the regulated community to understand the revisions to the SPCC rule finalized in December 2008 and November 2009. However, EPA is not extending the compliance date for drilling, production or workover facilities that are offshore or that have an offshore component, or for onshore facilities required to have and submit Facility Response Plans (FRPs). Additionally, the Agency is delaying the compliance date by which facilities must address milk and milk product containers, associated piping and appurtenances that are constructed according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade "A" Pasteurized Milk Ordinance (PMO) or a State dairy regulatory requirement equivalent to the current applicable PMO. The date by which the owner or operator of a facility must comply with the SPCC requirements for these milk and milk product containers is delayed one year from the effective date of a final rule specifically addressing these milk and milk product containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a compliance date for these facilities. Both the extension and delay of the compliance date provide time for certain facilities to undertake the actions necessary to prepare or amend their SPCC Plans, as well as implement them.

DATES: This final rule is effective on October 14, 2010.

ADDRESSES: The public docket for this rulemaking, Docket ID No. EPA–HQ–OPA–2009–0880, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information may not be publicly available, such as Confidential Business Information (CBI) or other information the disclosure of which 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 at *http://www.regulations.gov* or in hard copy at the EPA Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday,

excluding legal holidays. The telephone number of the Public Reading Room is 202–566–1744, and the telephone number to make an appointment to view the docket is 202–566–0276.

FOR FURTHER INFORMATION CONTACT: For general information on the SPCC rule, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this final rule, contact either Vanessa Principe at (202) 564–7913 (*principe.vanessa@epa.gov*) or Mark W. Howard at (202) 564–1964 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION: The contents of this preamble are:

I. General Information
II. Entities Potentially Affected by This Final Rule
III. Statutory Authority
IV. Background
V. This Action
A. Extension of Compliance Date by One Year for Certain Facilities
B. Exceptions to the Compliance Date Extension
C. Oil Production Facilities Beginning Operations After the Compliance Date
D. Delay of Compliance Date for Facilities Affecting Milk and Milk Product Containers, Associated Piping and Appurtenances
E. Summary of Comments and Response
F. Other Considerations
VI. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132 Federalism
F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045—Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. General Information

On August 3, 2010, the Agency proposed to amend the date by which certain facilities must prepare or amend their Spill Prevention, Control, and Countermeasure (SPCC) Plans (or "Plan"), and implement those Plans (75 FR 45572). This action extends the compliance date an additional year for certain facilities, with a new compliance date of November 10, 2011, to allow time for those affected in the regulated community to understand the revisions to the SPCC rule finalized in December 2008 and November 2009 and amend or prepare and implement their SPCC Plans. However, EPA is not extending the compliance date for drilling, production or workover facilities that are offshore or that have an offshore component, or for onshore facilities required to have and submit Facility Response Plans (FRPs).

Additionally, the Agency is delaying the compliance date by which the owner or operator of a facility must address milk and milk product containers, associated piping and appurtenances that are constructed according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade "A" Pasteurized Milk Ordinance (PMO) or a State dairy regulatory requirement equivalent to the current applicable PMO. The date by which the owner or operator of a facility must comply with SPCC requirements for these milk and milk product containers is delayed one year from the effective date of a final rule specifically addressing these milk and milk product containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a new compliance date for these facilities. Both the extension and delay of the compliance date provide time for certain facilities to undertake the actions necessary to prepare or amend their SPCC Plans, as well as implement them.

II. Entities Potentially Affected by This Final Rule

In the table below, EPA is providing a list of potentially affected entities. However, this action may affect other entities not listed below. The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section titled **FOR FURTHER INFORMATION CONTACT**.

Industry sector	NAICS code
Oil Production	211111
Farms	111, 112
Electric Utility Plants	2211
Petroleum Refining and Related Industries	324
Chemical Manufacturing	325
Food Manufacturing	311, 312
Manufacturing Facilities Using and Storing Animal Fats and Vegetable Oils	311, 325
Metal Manufacturing	331, 332
Other Manufacturing	31–33
Real Estate Rental and Leasing	531–533
Retail Trade	441–446, 448, 451–454
Contract Construction	23
Wholesale Trade	42
Other Commercial	492, 541, 551, 561–562
Transportation	481–488
Arts Entertainment & Recreation	711–713
Other Services (Except Public Administration)	811–813
Petroleum Bulk Stations and Terminals	4247
Education	61
Hospitals & Other Health Care	621, 622
Accommodation and Food Services	721, 722
Fuel Oil Dealers	45431
Gasoline Stations	4471
Information Finance and Insurance	51, 52
Mining	212

Industry sector	NAICS code
Warehousing and Storage	493
Religious Organizations	813110
Military Installations	928110
Pipelines	4861, 48691
Government	92

III. Statutory Authority

33 U.S.C. 1251 *et seq.;* 33 U.S.C.2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p.351.

IV. Background

On July 17, 2002, the Agency published a final rule that amended the SPCC regulation (67 FR 47042). The rule became effective on August 16, 2002. The final rule included compliance dates in § 112.3 for preparing, amending, and implementing SPCC Plans. The dates for complying with amendments to the SPCC regulations have been amended a number of times: on January 9, 2003 (68 FR 1348), on April 17, 2003 (68 FR 18890), on August 11, 2004 (69 FR 48794), on February 17, 2006 (71 FR 8462), on May 16, 2007 (72 FR 27444), and again on June 19, 2009 (74 FR 29136). These extensions alleviated the need for individual extension requests and provided additional time for the regulated community to, among other things: understand the July 2002 SPCC amendments and the implications of the litigation (*see* 69 FR 29728, May 25, 2004 and 73 FR 71941, November 26, 2008); allow those potentially affected in the regulated community an opportunity to make changes to their facilities and to their SPCC Plans necessary to comply with amendments to the SPCC rule as finalized in December 2006, December 2008, and November 2009; and to understand the material presented in the *SPCC Guidance for Regional Inspectors* before preparing or amending their SPCC Plans. All of these changes and amendments were promulgated to provide increased clarity, to tailor the requirements to particular industry sectors, and to streamline certain requirements for those facility owners or operators subject to the rule. The current date under § 112.3(a), (b) and (c) by which owners/operators of facilities must prepare or amend their SPCC Plans, and implement those Plans, is November 10, 2010.

In accordance with the January 20, 2009 White House memorandum entitled, "Regulatory Review," and the memorandum from the Office of Management and Budget entitled, "Implementation of Memorandum Concerning Regulatory Review" (M–09–08, January 21, 2009) (OMB memorandum), the effective date of the December 2008 rulemaking was delayed until April 4, 2009 (74 FR 5900, February 3, 2009) and then until January 14, 2010 (74 FR 14736, April 1, 2009). The Agency took this action to ensure that the rule reflected proper consideration of all relevant facts. In the February 3, 2009 notice, EPA requested public comment on the extension of the effective date and its duration, and on the regulatory amendments contained in the December 2008 final rule. Upon reviewing the record for the amendments and the additional comments, EPA promulgated further amendments to the SPCC rule on November 13, 2009 (74 FR 58784), making limited changes to the December 2008 amendments. The effective date for both the December 5, 2008 and the November 13, 2009 final rule is January 14, 2010, with a compliance date of November 10, 2010. Because of the uncertainty that surrounded EPA's review of the final amendments to the December 5, 2008 rule, the delay of the effective date of that rule and publication of final rule amendments on November 13, 2009, the Agency is extending the compliance date for certain facilities.

On January 15, 2009, EPA proposed to exempt from the SPCC requirements milk containers, associated piping and appurtenances provided they are constructed according to current applicable 3–A Sanitary Standards, and are subject to the current applicable PMO or a State dairy regulatory requirement equivalent to the current applicable PMO (74 FR 2461), and that the capacity of these milk containers would not be included in a facility's total oil storage capacity calculation. The Agency requested comment on an exemption for milk product containers and their associated piping and appurtenances from the SPCC rule provided they are also constructed in accordance with the current applicable 3–A Sanitary Standards, and are subject to the current applicable Grade "A" PMO sanitation requirements or a State dairy regulatory equivalent to the current applicable PMO. The Agency also requested comment on how to address milk storage containers (including totes) that may not be constructed to 3–A Sanitary Standards under the SPCC rule and whether they should also be exempted from the SPCC requirements, provided they are subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO. Finally, the Agency also requested comment on alternative approaches to address milk and milk product containers, associated piping and appurtenances under the SPCC rule. Today's action delays the compliance date by which facilities must address milk and milk product containers, associated piping and appurtenances that may be impacted by a final rule exempting these containers.

V. This Action

Under the current provisions in § 112.3(a), the owner or operator of a facility that was in operation on or before August 16, 2002 must maintain and implement the facility's SPCC Plan, make any necessary revisions pursuant to the 2002, 2006, 2008 and 2009 amendments to the Plan, and fully implement the amended Plan by November 10, 2010; the owner or operator of a facility that came into operation after August 16, 2002, but before November 10, 2010, must prepare and fully implement an SPCC Plan on or before November 10, 2010. Under the current provisions in § 112.3(b), the owner or operator of a facility (excluding oil production facilities) that becomes operational after November 10, 2010 must prepare and implement an SPCC Plan before beginning operations; the owner or operator of an oil production facility that becomes operational after November 10, 2010 must prepare and implement a Plan within six months after beginning operations. In addition, the current provision in § 112.3(c) requires the owners and operators of onshore and offshore mobile or portable facilities to prepare, implement, and maintain an SPCC Plan, and to amend it, if necessary to ensure compliance with this part, on or before November 10, 2010. The owner or operator of any onshore or offshore mobile or portable facility that becomes operational after November 10, 2010, must prepare and implement a Plan before beginning operations.

This rule amends the dates in § 112.3(a), (b) and (c) by which the owners/operators of facilities (except drilling, production or workover facilities that are offshore or that have an offshore component, and all onshore facilities required to have and submit FRPs [1]) must prepare or amend their SPCC Plans, and implem ent those Plans, to November 10, 2011. This action extends the date by one year from the current SPCC compliance date of November 10, 2010. This extension of the compliance date does not apply, however, to drilling, production or workover facilities that are completely offshore or that have both onshore and offshore components (*e.g.,* an oil production facility with offshore wellheads connected to an onshore tank battery by submerged flowlines). For offshore drilling, production or workover facilities, the Agency is concerned about the need to have the most up-to-date SPCC Plans due to the unusual combination of characteristics of these facilities: continuous flow of oil at the facility, potential discharges being limited only by the capacity and pressure of the underground reservoir, and discharges that would have immediate and direct impact on water.

For onshore facilities, the Agency also is concerned that extending the existing compliance date for facilities with large oil storage capacities could increase the potential to cause substantial harm if a discharge were to occur. Onshore facilities with large oil storage capacities have the potential to cause substantial harm as identified under the FRP regulation (40 CFR Part 112.20 and 112.21). FRP facilities are those with storage capacities of 1 million gallons or more that could cause substantial harm [2] or those with storage capacities at or above 42,000 gallons and that transfer oil to or from a vessel over water. The Agency believes that FRP facilities should also have the most up-to-date SPCC Plans due to the potential to cause substantial harm, if a discharge were to occur. (Note: The Agency has not changed any compliance dates with respect to the FRP regulations.) Therefore, EPA is not extending the compliance date for drilling, production or workover facilities that are offshore or that have an offshore component, or all onshore facilities required to have and submit FRPs, due to the threats these facilities pose of significant oil spills to navigable waters or adjoining shorelines.

The Agency is also delaying the compliance date by which the owner or operator of a facility must address milk and milk product containers, associated piping and appurtenances. The delay of the compliance date affects facilities with milk and milk product containers that are constructed according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO. The date by which a facility owner or operators must comply with SPCC requirements for these milk and milk product containers is delayed by one year from the effective date of a final rule specifically addressing these milk and milk product containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a compliance date for these facilities. The Agency will establish the compliance date and publish it in the **Federal Register** as part of any final action on the proposed exemption (74 FR 2461, January 15, 2009). The delay provides the owner or operator of these facilities the opportunity to fully understand any regulatory amendments that may be finalized.

This rule is effective immediately upon publication in the **Federal Register**. Section 553(d) of the Administrative Procedures Act requires 30 days notice before the effective date of a final rule. However, section 553(d)(1) allows an exception to the 30-day notice where a rule relieves a restriction. Because this final rule relieves a restriction, the Agency invokes section 553(d)(1) to allow an immediate effective date.

Today's rule revises the regulatory text in the proposed rule in response to the comments received. The Agency is making changes to the regulatory text in § 112.3 to clarify how the extension and the delay of the compliance date applies for different facilities.

A. Extension of the Compliance Date by One Year for Certain Facilities

This rule extends for most facilities the dates in § 112.3(a), (b) and (c) by which the owner or operator must prepare or amend and implement an SPCC Plan. Exclusions to this compliance date extension are described below.[3] Today's rule amends and combines § 112.3(a) with §§ 112.3(b)(1) and (c) in the new paragraph § 112.3(a)(1) to:

- Amend the compliance date for a facility, including a mobile or portable facility, in operation on or before August 16, 2002 to require the owner or operator to make any necessary amendments to an SPCC Plan and fully implement the amended Plan by November 10, 2011.[4]
- Amend the compliance date for a facility, including a mobile or portable facility, which came into operation after August 16, 2002, but before November 10, 2011, to require the owner or operator to prepare and fully implement an SPCC Plan on or before November 10, 2011.
- Amend the compliance date for a facility, including a mobile or portable facility, (except an oil production facility [5]) which becomes operational after November 10, 2011 to require the owner or operator to prepare and implement an SPCC Plan before beginning operations.
- Incorporate the language under the current § 112.3(c) for mobile or portable facilities (such as an onshore drilling or workover rig, or a portable fueling facility) to amend the compliance date for these facilities to November 10, 2011 and maintain the language that allows mobile or portable facilities to prepare a general Plan.

An extension of the compliance date for these facilities is appropriate because it provides the owners or operators of SPCC-regulated facilities the opportunity to fully understand the regulatory amendments offered by revisions to the SPCC rule promulgated on December 5, 2008 (73 FR 74236) and November 13, 2009 (74 FR 58784). Given the delay in the effective date for the December 2008 rule amendment,

[1] Offshore FRP facilities are addressed in the exception to the compliance date extension as part of the drilling, production or workover facilities that are offshore or that have an offshore component.

[2] A facility may pose "substantial harm" according to the FRP rule if it (1) has a total oil storage capacity greater than or equal to 42,000 gallons and it transfers oil over water to/from vessels; or (2) has a total oil storage capacity greater than or equal to one million gallons and meets one of the following conditions: (a) Does not have sufficient secondary containment for the capacity of the largest aboveground oil storage tank in each aboveground storage area; (b) is located at a distance such that a discharge from the facility could cause "injury" to fish, wildlife, and sensitive environments; (c) is located at a distance such that a discharge from the facility would shut down a public drinking water intake; or (d) has had, within the past five years, a reportable discharge greater than or equal to 10,000 gallons.

[3] For applicability of this rule to facilities with milk and milk product containers, associated piping and appurtenances, *see* Section V.D in this preamble.

[4] To be eligible for the compliance extension, owners or operators of facilities in operation before August 16, 2002 must continue to maintain their existing SPCC Plans.

[5] On December 5, 2008 (73 FR 74236), EPA finalized an amendment to allow a new oil production facility (*i.e.,* one that becomes operational after the compliance date) a period of six months after the start of operations to prepare and implement an SPCC Plan.

and the uncertainty that surrounded the final amendments because of this delay, this extension allows potentially affected facilities an additional year beyond the current compliance date of November 10, 2010 to make any changes to their facilities and SPCC Plans to comply with the revised SPCC requirements. Considering that the changes in the final November 2009 amendments were very limited, and that most of the December 2008 amendments offered compliance options and regulatory burden relief, a timeframe for this extension of one year is appropriate. A one-year period from the current compliance date provides sufficient time to understand and implement the amendments to the SPCC rule.

B. Exceptions to the Compliance Date Extension

The Agency is not extending the compliance date for drilling, production or workover facilities that are offshore or that have an offshore component, or for onshore facilities required to have and submit FRPs. The Agency is particularly concerned about the potential for immediate environmental impacts resulting from oil spills to navigable waters or adjoining shorelines posed by these facilities. All of these facilities have potentially significant quantities of oil that could be discharged to navigable waters or adjoining shorelines. Offshore drilling, production and workover facilities (and those with an offshore component) have a constant flow of oil associated with them and discharges could be in amounts that far exceed the oil storage capacity of the facility. Based on the recent experience with the Gulf of Mexico oil spill, the Agency is concerned that any potential oil discharge may be limited only by the capacity and pressure of the underground petroleum reservoir. The Agency's concern regarding these facilities is reflected in the fact that they have a greater number of requirements under the SPCC rule because of their location over navigable waters or adjoining shorelines (40 CFR Part 112.11). In addition to those facilities completely offshore, the Agency has identified many onshore facilities with offshore components, as in the case of over-water production platforms. While these facilities may have their tank batteries located onshore, their wellhead and portions of the flowlines are below the surface of the water. Offshore components include, but are not limited to, flow lines, gathering lines, wellheads, shut in valves, pressure control and sensing devices, cathodic protection devices and related piping and appurtenances. Because the Agency is equally concerned with the potential for immediate environmental impacts resulting from oil spills from a facility's offshore components, it is also excluding these facilities from any extension to the compliance date. The Agency is also excluding all onshore FRP facilities from the extension because of their large oil storage capacities and their potential to cause substantial harm in the event of a discharge as identified under the FRP regulation (40 CFR 112.20). FRP facilities are those with storage capacities of 1 million gallons or more that could cause substantial harm, or those with storage capacities at or above 42,000 gallons and that transfer oil to or from a vessel over water.

Today's rule adds a new paragraph § 112.3(a)(2) to maintain the existing compliance date for this subset of facilities, and combines it with the § 112.3(c) provision to indicate that the existing compliance date also applies to mobile or portable facilities within this subset:

- Maintains the existing compliance date for A drilling, production or workover facility, including a mobile or portable facility, that is offshore or that has an offshore component; or an onshore facility required to have and submit an FRP, that was in operation on or before August 16, 2002, that requires the owner or operator to make any necessary amendments to an SPCC Plan and fully implement the amended Plan by November 10, 2010.
- Maintains the existing compliance date for a drilling, production or workover facility, including a mobile or portable facility, that is offshore or that has an offshore component, or an onshore facility required to have and submit an FRP, that came into operation after August 16, 2002, but before November 10, 2010, that requires the owner or operator to prepare and fully implement an SPCC Plan on or before November 10, 2010.
- Maintains the existing compliance date for a facility (except an oil production facility [6]) that is either: A drilling, production or workover facility, including a mobile or portable facility, that is offshore or that has an offshore component, or an onshore facility required to have and submit an FRP, that becomes operational after November 10, 2010, that requires the owner or operator to prepare and implement an SPCC Plan before beginning operations.
- Incorporates language under the current § 112.3(c) provision to maintain the existing compliance date for mobile or portable facilities that fall within this subset of facilities (such as a barge mounted offshore drilling or workover rig), and maintains the language that allows mobile or portable facilities to prepare a general Plan.

C. Oil Production Facilities Beginning Operations After the Compliance Date

The Agency is amending § 112.3(b)(2) to distinguish the two separate compliance dates that would apply to oil production facilities that become operational after the compliance dates. The Agency is also moving this provision to § 112.3(b). The new § 112.3(b) amendments:

- Maintain the existing compliance date for any oil production facility that is offshore or that has an offshore component, or any onshore oil production facility required to have and submit an FRP, that becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), that requires the owner or operator to prepare and implement a Plan within six months after beginning operations.
- Amend the compliance date for any onshore oil production facility (*i.e.,* one that does not have an offshore component and is not required to have and submit an FRP) that becomes operational after November 10, 2011, and could reasonably be expected to have a discharge as described in § 112.1(b), that requires the owner or operator to prepare and implement a Plan within six months after beginning operations.

D. Delay of Compliance Date for Facilities Affecting Milk and Milk Product Containers, Associated Piping and Appurtenances

The Agency is delaying the compliance date by which the owner or operator of a facility must address milk and milk product containers, associated piping and appurtenances that are constructed according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO. The Agency is taking this action for facilities that would be affected by any final determination on the proposed rule to exempt these containers from the SPCC requirements (74 FR 2461, January 15, 2009). The date

[6] On December 5, 2008 (73 FR 74236), EPA finalized an amendment to allow a new oil production facility (*i.e.,* one that becomes operational after the compliance date) a period of six months after the start of operations to prepare and implement an SPCC Plan.

by which a facility owner or operator must comply with SPCC requirements for these milk and milk product containers is delayed by one year from the effective date of a final rule specifically addressing these milk and milk product containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a new compliance date for these facilities. The Agency will establish the new compliance date and publish it in the **Federal Register** as part of any final action on the proposed exemption.

The delay for these facilities provides the owner or operator the opportunity to fully understand any new regulatory amendments for milk and milk product containers, associated piping and appurtenances. Today's rule amends § 112.3(c) to:

- Delay the compliance date by which the owner or operator of a facility must address milk and milk product containers, associated piping and appurtenances that are constructed according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO:
  - During the delay, the owner or operator of the facility does not include milk and milk product containers as described above when either determining the aggregate facility oil storage capacity or as part of the facility's SPCC Plan.
- Require that all other oil storage containers at the facility (excluding milk and milk product containers as described above) be addressed in the SPCC Plan by November 10, 2011 when the facility has an aboveground oil storage capacity (excluding the capacity of these milk and milk product containers) greater than 1,320 U.S. gallons or a completely buried storage capacity greater than 42,000 U.S. gallons. A facility that has milk and milk product containers, associated piping and appurtenances as described above, that:
  - Began operating before the August 16, 2002 effective date of the July 2002 SPCC rule amendments (67 FR 47042) will have to maintain the existing SPCC Plan for any other oil container at the facility, and *amend* it to ensure compliance with the SPCC rule requirements to address these other oil containers otherwise subject to the SPCC requirements by November 10, 2011;
  - Began operating after August 16, 2002. but before November 10, 2011, will have to *prepare* and implement an SPCC Plan for the facility to address any other oil containers at the facility otherwise subject to the SPCC requirements by November 10, 2011; and
  - Begins operating after November 10, 2011 will have to prepare and implement a Plan before starting operations to address any other oil containers at the facility otherwise subject to the SPCC requirements.

E. Summary of Comments and Response

The Agency solicited comments on the proposed compliance date extension by which owners and operators would be required to prepare, amend, and implement SPCC Plans in accordance with the amendments to the SPCC rule. The Agency also discussed an alternative of a shorter compliance date extension, such as either six or nine months (either May 10, 2011 or August 10, 2011).

In addition, the Agency solicited comments on the proposed exceptions to the compliance date extension: Requiring drilling, production or workover facilities that are offshore or that have an offshore component, or onshore facilities that are required to have and submit an FRP, to comply by the current compliance date of November 10, 2010.

Furthermore, the Agency also solicited comments on the proposed delay of the compliance date by which owners and operators of facilities that have milk containers, associated piping and appurtenances would be required to prepare, amend, and implement SPCC Plans in accordance with amendments to the SPCC rule.

The Agency received 34 comments on the proposed rule. The discussion below summarizes and responds to the major comments received. A more complete response to comments can be found in the docket for this rulemaking, EPA–HQ–OPA–2009–0880.

Comments

Comments that support an extension of the compliance date. The majority of comments supported the Agency's proposal to extend the compliance dates in Sec. 112.3 for certain facilities. They agreed with the Agency that an extension of the compliance date was necessary to allow owners and operators sufficient time to amend and implement their SPCC Plans. Of those that supported an extension of the compliance dates, some comments agreed with extending the compliance dates as proposed. Other comments supported an extension, but did not agree with the length of the extension proposed by the Agency, arguing for additional time. These requests cited the extent of modifications necessary at facilities; the need to obtain the services of Professional Engineers (PE); the time for EPA and other stakeholders to conduct outreach; the need for EPA to complete further regulatory clarifications on the definition of oil; finalize clarification on jurisdictional issues between EPA and the Department of Transportation (DOT); and revise the *SPCC Guidance for Regional Inspectors* to help stakeholders better understand the regulatory requirements and the December 2008 and November 2009 amendments. Some comments indicated that the alternative approach to consider a shorter compliance date extension, such as either six or nine months, would not be appropriate.

Comment relating to eligibility of the compliance date. One comment raised concerns with a footnote in the preamble of the proposed rule that stated, "[t]o be eligible for the compliance extension, owners or operators of facilities in operation before August 16, 2002 must continue to maintain their existing SPCC Plans."

Comments pertaining to the exceptions to the compliance date extension. Several comments supported or took no position on the exception to the compliance date for drilling, production or workover facilities that are offshore or that have an offshore component, or onshore facilities required to have and submit FRPs. One comment, however, opposed the exception for onshore facilities required to have and submit FRPs, arguing that these facilities have always been included in compliance date extensions in the past, and that this time should be no exception. The comment further indicated that FRP-regulated facilities have EPA-approved FRPs that are in place to address the Agency's concern that these facilities have the potential to cause substantial harm if a discharge were to occur. Finally, FRP facilities are large and complex operations that require additional time to come into compliance and therefore these facilities should be eligible for the one-year extension.

Comments that support a delay of the compliance date for facilities with milk containers that meet specific requirements. Several comments expressed support for delaying the compliance date for facilities with milk containers, associated piping and appurtenances until one year after EPA finalizes a rule for these facilities. Two comments requested that EPA clarify that the extension and future exemption will apply to milk and milk products,

including but not limited to such products as cheese, cream, yogurt and ice cream mix. A number of comments indicated that the two different compliance deadlines for dairy facilities based on their start date are unnecessarily confusing and complex. The comments specifically cited confusion with how the compliance date applies based on when a facility begins operating and whether they must maintain and amend an SPCC Plan or prepare a new SPCC Plan. The organizations requested that EPA extend the compliance date to one year after finalization of the bulk milk storage exemption to all facilities, regardless of start date. Additionally, comments requested clarification on how the compliance date applies to facilities with both petroleum and bulk milk storage. Comments also requested that EPA take final action on the proposal to exempt milk storage containers, associated piping, and appurtenances from the SPCC rule.

Response to Comments

Response to comments that support an extension of the compliance date. EPA agrees with the comments that an extension of the compliance date for certain facilities is necessary because it provides the owner or operator of a facility the opportunity to fully understand the regulatory amendments offered by the revisions to the SPCC rule promulgated on December 5, 2008 (73 FR 74236) and November 13, 2009 (74 FR 58784). Furthermore, this extension will allow the regulated community time to understand all of the regulatory amendments offered by revisions to the SPCC rule promulgated since July 2002. Therefore, the Agency is promulgating a one-year extension of the compliance dates for certain facilities, but is excluding from the extension drilling, production and workover facilities that are offshore or that have an offshore component, or onshore facilities that are required to have and submit an FRP. EPA believes that a one-year extension of the compliance dates to November 10, 2011 is appropriate for certain facilities for a number of reasons, particularly since the owners and operators of SPCC-regulated facilities have had at least a year to understand the final SPCC amendments.

The SPCC compliance dates have been delayed since the promulgation of amendments in July 2002; during this time, new facilities (those that have become operational after the effective date of the July 2002 amendments) have not yet been required to prepare and implement an SPCC Plan. Therefore, EPA believes that any compliance date beyond the extension finalized in this action would be inappropriate and not environmentally protective.

Facilities in operation prior to the effective date of the July 2002 amendments are required to maintain their SPCC Plans and have had ample time to schedule and conduct facility modifications (as necessary) to comply with these amendments. Additionally, because the SPCC amendments published in December 2008 and November 2009 primarily streamlined the rule requirements, facilities should not require extensive modifications in order to comply with these regulatory amendments.

Since promulgating the July 2002 amendments to the SPCC rule, the Agency has and will continue to provide outreach and compliance assistance to SPCC regulated facilities so that a compliance extension for certain facilities to November 10, 2011 should be sufficient. The Agency does not believe ongoing outreach activities; updates to existing guidance documents; further regulatory clarifications; or development of new guidance or jurisdictional clarifications between EPA and other federal agencies are a basis for further extending the compliance date. EPA intends to continue to conduct outreach and provide guidance and clarification on the SPCC requirements (as appropriate), but does not believe that facilities should wait to amend or prepare and implement their SPCC Plans because these are ongoing activities.

EPA also does not agree that the extension or additional time for compliance should be provided to revise the *SPCC Guidance for Regional Inspectors.* While EPA plans to revise the guidance document, most of the modifications to the SPCC regulation are already explained and discussed in the preamble to the final rules. Thus, there are very few necessary revisions to the guidance to address any new regulatory burden, as the past several actions on the SPCC rule were for the purposes of regulatory streamlining.[7] EPA did not propose an extension to the compliance date with a rationale based on completion of the guidance for the reasons stated above.

The Agency did not receive any comments supporting a shorter extension to the compliance date, and thus, has decided not to promulgate an amended compliance date for certain facilities to either of the alternative shorter time periods offered for comment (either May 10, 2011 or August 10, 2011). The Agency recognizes that the owner or operator of a regulated facility needs adequate time to comply with the SPCC rule following amendments to the regulation. EPA recognizes that any timeframe shorter than one year from the current compliance date may not allow sufficient time for those facilities for which EPA is granting a compliance date extension to fully understand and comply with all of the recently promulgated SPCC amendments or hire Professional Engineers. A one year timeframe also accommodates seasonal considerations for various industries. Therefore, the Agency is promulgating a one-year compliance date extension to allow certain facilities time to prepare, amend, and implement an SPCC Plan following recent amendments to the SPCC rule.

Response to the comment relating to eligibility of the compliance date. EPA does not agree with the comment that suggests that footnote #3 in the proposed rule that clarifies how the compliance date extension applies to facilities in operation prior to August 16, 2002 is incorrect. EPA established initial compliance dates in the July 2002 final rule (67 FR 47042) and clarified in the preamble how the compliance dates apply to facilities in operation prior to the effective date of the rule (*see* 67 FR 47082, July 17, 2002). The examples provided in the July 2002 preamble were consistent with and illustrated the accompanying regulatory text that established the initial compliance dates. The Agency has indicated in each **Federal Register** notice announcing the subsequent extension to the compliance dates[8] that facilities in operation prior to August 16, 2002 must maintain an SPCC Plan. If a facility has no SPCC Plan to maintain, then the date by which the facility has to amend the Plan

[7] EPA intends to issue revisions to the SPCC Guidance for Regional Inspectors that address changes made to the SPCC rule, consistent with the December 2006, December 2008, and November 2009 regulatory amendments (71 FR 77266, December 26, 2006; 73 FR 74236, December 5, 2008; 74 FR 58784, November 13, 2009). The guidance document is designed to provide more detail about the rule's applicability, to clarify the role of the inspector in the review and evaluation of a facility owner or operator's compliance with the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. EPA welcomes comments from the regulated community and the public on the guidance document at any time. Instructions for submitting comments are provided on the EPA Office of Emergency Management Web site at *http://www.epa.gov/emergencies.*

[8] The dates for complying with amendments to the SPCC regulations have been amended a number of times: On January 9, 2003 (68 FR 1348), on April 17, 2003 (68 FR 18890), on August 11, 2004 (69 FR 48794), on February 17, 2006 (71 FR 8462), on May 16, 2007 (72 FR 27444), and again on June 19, 2009 (74 FR 29136).

to comply with the SPCC regulatory revisions promulgated since 2002 does not apply and the owner or operator is not eligible for the extension. The footnote discussed here is wholly consistent with the Agency's preamble examples in the July 2002 final rule and the regulatory text extending compliance dates since 2002.

Response to the comments pertaining to the exceptions to the compliance date extension. EPA does not agree that onshore facilities that are required to have and submit FRPs should be eligible for the one year extension. The Agency is concerned with the threat for immediate environmental impacts resulting from oil spills from these facilities because of their large oil storage capacities and their potential to cause substantial harm in the event of a discharge as identified under the FRP regulation (40 CFR 112.20). The comment correctly indicates that many of these facilities are implementing FRPs that are approved by the Agency; however, these plans serve to identify response capability in the event of a discharge to navigable waters or adjoining shorelines and do not specifically include requirements that serve to prevent these discharges. For example, implementation of a tank integrity testing program and brittle fracture evaluations are SPCC requirements and not FRP requirements. Many of the SPCC requirements promulgated since July 2002 serve to enhance prevention of oil spills and EPA does not believe it is environmentally protective to extend the date by which these requirements are addressed and implemented at FRP-regulated facilities.

The Agency recognizes that some facilities excluded from the extension of the compliance date (*i.e.,* drilling, production or workover facilities that are offshore or that have an offshore component, or an onshore facility that is required to have and submit an FRP) may require additional time to amend or prepare their SPCC Plans as a result of either non-availability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of the owner or operator. If so, the owner or operator of the facility may submit a written request for additional time to amend or prepare an SPCC Plan to the Regional Administrator in accordance with § 112.3(f).

Response to comments that support a delay of the compliance date for facilities with milk containers that meet specific requirements. EPA agrees with comments that supported a delay of the compliance date by which facilities must address milk containers, associated piping and appurtenances that are constructed according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO. The Agency is moving forward to take final action on the proposed rulemaking that addresses those milk containers as expeditiously as possible. Additionally, the Agency is considering whether to exempt milk product containers, piping and appurtenances that are subject to the same 3–A Sanitary Standards and Grade "A" PMO specified for milk containers, associated piping and appurtenances. Therefore, the Agency is clarifying that the delay applies to both milk and milk product containers, associated piping and appurtenances constructed according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO. The compliance date delay by which the owner or operator of a facility must address milk and milk product containers described above will provide time to complete this action.

EPA agrees that a single date by which the owners or operators of facilities must address milk and milk product containers, associated piping and appurtenances that are constructed according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO in the facility's SPCC Plan, would offer clarity. A date will be established in a FR notice in the future and will be one year from the effective date of a final rule addressing the SPCC requirements specifically for these milk and milk product containers, associated piping and appurtenances, or as specified by a rule that otherwise establishes a compliance date for these facilities. During the delay, the owner or operator of the facility excludes milk and milk product containers, associated piping and appurtenances that are constructed according to the current applicable 3–A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO from the facility's aggregate oil storage capacity calculations, and does not include these containers in the SPCC Plan.

However, when there are other oil storage containers (such as petroleum containers) at a facility that has milk and milk product containers, associated piping and appurtenances as described above and the facility meets the aggregate oil storage capacity thresholds of § 112.1[9] (excluding the capacity of the milk and milk product containers) then the owner or operator of the facility must maintain and amend, or prepare an SPCC Plan to address these other oil containers at the facility in accordance with § 112.3(a)(1) by November 10, 2011.

6. Other Considerations

If an owner or operator of an SPCC-regulated facility requires additional time to comply with the SPCC rule, he may submit a written request to the Regional Administrator in accordance with § 112.3(f). Such requests may be granted if the Regional Administrator finds that the owner or operator cannot comply with all SPCC requirements by the compliance date as a result of either non-availability of qualified personnel, or delays in construction or equipment delivery beyond his control and without the fault of such owner or operator.

It should be noted that these compliance date amendments would affect only the requirements of the July 2002, December 2006, December 2008, and November 2009 SPCC rule amendments (67 FR 47042, July 17, 2002; 71 FR 77266, December 26, 2006; 73 FR 74236, December 5, 2008; and 74 FR 29136, November 13, 2009) that are new (*i.e.,* requirements that did not exist or were not in effect prior to the 2002 amendments) or more stringent compliance obligations to those that were in effect in the 1973 SPCC rule. Provisions that provide regulatory relief to facilities are applicable as of the effective date of the amendment and would not require revisions to existing Plans "to ensure compliance" (*see* § 112.3). However, the facility owner or operator must amend the SPCC Plan to include new or more stringent provisions by the compliance date.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), this action has been determined to be a "significant regulatory action." This rule was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB's recommendations have been

[9] The facility has an aboveground oil storage capacity greater than 1,320 U.S. gallons or the completely buried storage capacity is greater than 42,000 U.S. gallons.

documented in the docket for this action.

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.* This rule would merely extend the compliance date for certain facilities subject to the rule. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 112 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0021. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule extends the compliance date in § 112.3(a)(1) for most facilities by one year and delays the compliance date in § 112.3(c) by which facilities must address milk and milk product containers, associated piping and appurtenances that meet certain conditions by one year from the effective date of a final rule addressing the SPCC requirements specifically for these containers, or as specified by a rule that otherwise establishes a compliance date for these facilities. The changes in the final November 2009 amendments were very limited, and the December 2008 amendments offered compliance options that streamlined and tailored the regulatory requirements. By simply extending the compliance date for most facilities, today's rule will defer the regulatory burden for all affected entities.

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. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule simply extends the compliance date for most facilities subject to the rule.

E. Executive Order 13132: Federalism

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Under CWA section 311(o), States may impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the Federal SPCC regulation and recognizes that some States have more stringent requirements (56 FR 54612, October 22, 1991). This rule does not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The rule does not significantly or uniquely affect communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. 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, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" (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 overall effect of this action is to defer the regulatory burden on facility owners or operators subject to its provisions.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 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.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rulemaking involves technical standards. EPA proposes to use the 3–A Sanitary Standards, "Storage Tanks for Milk and Milk Products", 3A 01–08, November 2001, developed by 3–A Sanitary Standards, Inc. A copy of these standards may be

obtained from the 3–A Sanitary Standards online store at *http://www.techstreet.com/3Agate.html;* by contacting the organization at 6888 Elm Street, Suite 2D, McLean, Virginia 22101; by phone at (703) 790–0295; or by facsimile at (703) 761–6284. EPA is finalizing a delay of the compliance date to the SPCC rule, by which the owner or operator of a facility that is subject to the SPCC requirements, must address milk and milk product storage containers and associated piping and appurtenances constructed in accordance with 3–A Sanitary Standards, and subject to the current applicable Grade "A" PMO or a State dairy regulatory requirement equivalent to the current applicable PMO.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this 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.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2) and will be effective on October 14, 2010.

List of Subjects in 40 CFR Part 112

Environmental protection, Milk, Milk product, Oil pollution, Oil spill response, Penalties, Reporting and recordkeeping requirements.

Dated: October 7, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons set forth in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

■ 2. Section 112.3 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

* * * * *

(a)(1) Except as otherwise provided in this section, if your facility, or mobile or portable facility, was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, and implement the amended Plan no later than November 10, 2011. If such a facility becomes operational after August 16, 2002, through November 10, 2011, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before November 10, 2011. If such a facility (excluding oil production facilities) becomes operational after November 10, 2011, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations. You are not required to prepare a new Plan each time you move a mobile or portable facility to a new site; the Plan may be general. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the mobile or portable facility is in a fixed (non-transportation) operating mode.

(2) If your drilling, production or workover facility, including a mobile or portable facility, is offshore or has an offshore component; or your onshore facility is required to have and submit a Facility Response Plan pursuant to 40 CFR 112.20(a), and was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, and implement the amended Plan no later than November 10, 2010. If such a facility becomes operational after August 16, 2002, through November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before November 10, 2010. If such a facility (excluding oil production facilities) becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations. You are not required to prepare a new Plan each time you move a mobile or portable facility to a new site; the Plan may be general. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the mobile or portable facility is in a fixed (non-transportation) operating mode.

(b) If your oil production facility as described in paragraph (a)(1) of this section becomes operational after November 10, 2011, or as described in paragraph (a)(2) of this section becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan within six months after you begin operations.

(c) If your facility has milk and milk product containers, associated piping and appurtenances constructed according to current applicable 3–A Sanitary Standards, and subject to current applicable Grade "A" Pasteurized Milk Ordinance (PMO) or a State dairy regulatory requirement equivalent to current applicable PMO, do not include these milk and milk product containers when either determining the aggregate oil storage capacity of your facility or as part of your Plan. The date in paragraph (a)(1), by which you must comply with the provisions of this part for these milk and milk product containers, is delayed by one year from the effective date of a final rule addressing these milk and milk product containers, or until a rule that otherwise establishes a compliance date. You must maintain and amend, or prepare your Plan to address any other oil containers at the facility otherwise subject to the requirements of this part by the compliance date in paragraph (a)(1) of this section if your facility

meets any of the aggregate oil storage capacity thresholds of § 112.1 of this part.

* * * * *

[FR Doc. 2010–25899 Filed 10–13–10; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–10, 301–11, 301–50, 301–73, and Appendix D to Chapter 301

[FTR Amendment 2010–05; FTR Case 2010–306; Docket Number 2010–0018, Sequence 1]

RIN 3090–AJ08

Federal Travel Regulation (FTR); Lodging and Transportation Amendment

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Travel Regulation (FTR) by revising and updating its policy on lodging and transportation. This final rule also updates an acronym and references to such in the FTR.

DATES: *Effective Date:* This final rule is effective November 15, 2010.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (MVCB), Room 4041, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cheryl D. McClain, Office of Governmentwide Policy (OGP), at (202) 208–4334 or e-mail at *cheryl.mcclain@gsa.gov*. Please cite FTR Amendment 2010–05; FTR case 2010–306.

SUPPLEMENTARY INFORMATION:

A. Background

GSA's Office of Governmentwide Policy (OGP) is updating the Federal Travel Regulation (FTR) by removing section 301–50.8. Section 301–50.8 contains language regarding limitations on travel arrangements for common carriers, commercial lodging, and car rental usage. Consequently, parts 301–10 and 301–11 will be revised to include the language pertaining to common carriers, commercial lodging and car rental accommodations. Specifically, OGP is revising section 301–10.105 regarding the basic requirements for using common carrier transportation and revising section 301–10.450 to provide guidance to travelers regarding renting vehicles under the Defense Travel Management Office's (DTMO) U.S. Government Car Rental Agreement. Also, section 301–11.11 is being revised to provide guidance to travelers who choose to obtain commercial lodging under a Government lodging agreement.

This final rule also updates references in section 301–73.106 and Appendix D to Chapter 301 to change "Surface Deployment Distribution Command" (SDDC) to "Defense Travel Management Office" (DTMO).

B. Executive Order 12866

This is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the revisions are not considered substantive. This final rule is also exempt from the Regulatory Flexibility Act per 5 U.S.C. 553(a)(2) because it applies to agency management or personnel. However, this final rule is being published to provide transparency in the promulgation of Federal policies.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the final changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates to agency management and personnel.

List of Subjects in 41 CFR Parts 301–10, 301–11, 301–50, 301–73, and Appendix D to Chapter 301

Government employees, Lodging and transportation programs.

Dated: August 25, 2010.

Martha Johnson,

Administrator of General Services.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR parts 301–10, 301–11, 301–50, 301–73, and Appendix D of Chapter 301 as set forth below:

PART 301–10—TRANSPORTATION EXPENSES

■ 1. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707, 40 U.S.C. 121(c), 49 U.S.C. 40118, OMB Circular No. A–126, revised May 22, 1992.

■ 2. Remove the undesignated center heading "Airline" that appears immediately before § 301–10.105.

■ 3. Revise § 301–10.105 to read as follows:

§ 301–10.105 What are the basic requirements for using common carrier transportation?

The basic requirements for using common carrier transportation fall into three categories:

(a) Using contract carriers, when available, and if your agency is a mandatory user of GSA's city-pair contracts for air passenger transportation services, unless you have an approved exception (*see* §§ 301–10.106 through 301–10.108 of this subpart);

(b) Using coach-class service, unless other than coach-class service is authorized under § 301–10.123 or § 301–10.162, and when travelling by ship, using lowest first-class accommodations, unless other than lowest first-class accommodations are authorized under § 301–10.183 of this subpart; and

(c) You must always use U.S. Flag Air Carrier (or ship) service for air passenger transportation or when travelling by ship, unless your travel circumstances meet one of the exceptions in §§ 301–10.135 through 301–10.138 or § 301–10.183 of this subpart.

■ 4. Amend § 301–10.450 by revising the section heading, designating the existing paragraph as paragraph (a), and adding paragraph (b) to read as follows:

§ 301–10.450 When and from whom may I rent a vehicle for official travel when authorized?

* * * * *

(b) When authorized to use a rental vehicle, you should consider renting a vehicle from a vendor that participates in the Defense Travel Management Office (DTMO) U.S. Government Car Rental Agreement to avail yourself of the Agreement's benefits, including the insurance and damage liability provisions, unless you are OCONUS and no agreement is in place for your TDY

location. The advantages of renting a car through the DTMO rental car program are:

(1) Rental car agreements are pre-negotiated;

(2) The agreement includes automatic unlimited mileage and collision damage insurance; and

(3) The rates established by the car rental agreement cannot be exceeded by the vendor.

PART 301–11—PER DIEM EXPENSES

■ 5. The authority citation for 41 CFR part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

■ 6. Revise § 301–11.11 to read as follows:

§ 301–11.11 How do I select lodging and make lodging reservations?

(a) You must make your lodging reservations through your agency's travel management service.

(b) You should always stay in a "fire safe" facility. This is a facility that meets the fire safety requirements of the Hotel and Motel Fire Safety Act of 1990 (the Act), as amended (*see* 5 U.S.C. 5707a).

(c) When selecting a commercial lodging facility, first consideration should be given to government lodging agreement programs such as FedRooms® (*http://www.fedrooms.com*). The advantages of obtaining lodging using the FedRooms® program are:

(1) Lodging rates are set at or below per diem rates;

(2) There are no add-on fees;

(3) The room cancellation deadline is 4 p.m. (or later) on the day of arrival;

(4) Most hotels offer last standard room availability rates;

(5) There are no early departure fees; and

(6) Rates are available using all booking channels (e.g., E-Gov Travel Service, Travel Management Service, FedRooms® Web site, and hotel reservation call centers). The FedRooms® rate code (XVU) must be entered to get the program benefits.

Note to § 301–11.11: 5 U.S.C. 5707a does not apply to the District of Columbia government.

PART 301–50—ARRANGING FOR TRAVEL SERVICES

■ 7. The authority citation for 41 CFR part 301–50 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c).

§ 301–50.8 [Removed]

■ 8. Remove § 301–50.8.

PART 301–73—TRAVEL PROGRAMS

■ 9. The authority citation for 41 CFR part 301–73 continues to read as follows:

Authority: 5 U.S.C. 5707; 40 U.S.C. 121(c).

§ 301–73.106 [Amended]

■ 10. Amend § 301–73.106, paragraph (a)(3) by removing "Surface Deployment and Distribution Command (SDDC)" and adding "Defense Travel Management Office (DTMO)" in its place.

Appendix D to Chapter 301—[Amended]

11. Amend Appendix D to Chapter 301 by removing the entry "SDDC: Surface Deployment and Distribution Command" and alphabetically adding the entry "DTMO: Defense Travel Management Office".

[FR Doc. 2010–25880 Filed 10–13–10; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XZ61

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2010 total allowable catch (TAC) of pollock for Statistical Area 610 in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 9, 2010, through 2400 hrs, A.l.t., December 31, 2010.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2010 TAC of pollock in Statistical Area 610 of the GOA is 26,256 metric tons (mt) as established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the 2010 TAC of pollock in Statistical Area 610 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 26,156 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pollock in Statistical Area 610 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 7, 2010.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: October 8, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–25882 Filed 10–8–10; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 75, No. 198
Thursday, October 14, 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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1605

Correction of Administrative Errors

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) proposes to use a constructed share price for retired Lifecycle funds in order to make error corrections after December 31st of the target year.

DATES: Comments must be received on or before November 15, 2010.

ADDRESSES: You may submit comments using one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of General Counsel, Attn: Thomas Emswiler, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.
- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942–1676.

The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change. We will post all substantive comments (including any personal information provided) without change (with the exception of redaction of SSNs, profanities, et cetera) on *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at (202) 942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Constructed Share Price

The Agency currently offers five Lifecycle funds: L Income, L 2010, L 2020, L 2030, and L 2040. The Agency will retire the L 2010 Fund when it reaches its target date of December 31, 2010. Upon retiring the L 2010 Fund, the Agency will transfer all money invested in the L 2010 Fund to the L Income Fund. Participants will no longer be able to make contributions to the L 2010 Fund after December 31, 2010. In effect, the L 2010 Fund will no longer exist.

The Agency anticipates receiving late and makeup contributions that would have been invested in the L 2010 Fund had they been made on time. Likewise, the Agency anticipates needing to remove funds erroneously contributed to the L 2010 Fund prior to its retirement date, i.e., do a negative adjustment. The Agency uses the current share price of the applicable investment fund when calculating the value of late contributions, makeup contributions, and negative adjustments. Because the L 2010 fund will no longer exist, the Agency must construct an appropriate "current" share price in order to make error corrections involving the L 2010 Fund after December 31, 2010.

The Agency proposes to calculate the constructed share price for the L 2010 Fund as follows: The constructed share price is the L 2010 Fund share price on December 31, 2010, multiplied by the current L Income Fund share price, divided by the L Income Fund share price on December 31, 2010. This calculation reflects the impact of merging the assets of the L 2010 Fund into the L Income Fund on December 31, 2010. The Agency will apply this calculation to retired Lifecycle funds in the future by substituting the L 2010 Fund and December 31, 2010 retirement date as follows: The constructed share price is the retired Lifecycle fund share price on December 31 of the retirement year, multiplied by the current L Income Fund share price, divided by the L Income Fund share price on December 31 of the retirement year.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees and members of the uniformed services who participate in the Thrift Savings Plan, which is a Federal defined contribution retirement savings plan created under the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514, and which is administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

List of Subjects in 5 CFR Part 1605

Claims, Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, the Agency proposes to amend 5 CFR part 1605 as follows:

PART 1605—CORRECTION OF ADMINISTRATIVE ERRORS

1. The authority citation for part 1605 continues to read as follows:

Authority: 5 U.S.C. 8351, 8432a, and 8474(b)(5) and (c)(1). Subpart B also issued under section 1043(b) of Public Law 104–106, 110 Stat. 186 and sec. 7202(m)(2) of Public Law 101–508, 104 Stat. 1388.

§ 1605.2 [Amended]

2. Amend § 1605.2, by revising paragraph (b)(1)(iii) and adding paragraph (b)(1)(iv) to read as follows:

* * * * *

(b) * * *

(1) * * *

(iii) Determine the dollar value on the posting date of the number of shares the participant would have received had the contributions or loan payments been made on time. If the contributions or loan payments would have been invested in a Lifecycle fund that is retired on the posting date, the constructed share price shall equal the retired Lifecycle fund share price on December 31 of the retirement year, multiplied by the current L Income Fund share price, divided by the L Income Fund share price on December 31 of the retirement year. The dollar value shall be the number of shares the participant would have received had the contributions or loan payments been made on time multiplied by the constructed share price.

(iv) The difference between the dollar value of the contribution or loan payment on the posting date and the dollar value of the contribution or loan payment on the "as of" date is the breakage.

* * * * *

§ 1605.12 [Amended]

3. Amend § 1605.12, by revising paragraph (c)(2)(ii) to read as follows:

* * * * *

(c) * * *

(2) * * *

(ii) Multiply the price per share on the date the adjustment is posted by the number of shares calculated in paragraph (c)(2)(i) of this section. If the contribution was erroneously contributed to a Lifecycle fund that is retired on the date the adjustment is posted, the price per share shall equal the retired Lifecycle fund share price on December 31 of the retirement year, multiplied by the current L Income Fund share price, divided by the L Income Fund share price on December 31 of the retirement year.

* * * * *

[FR Doc. 2010–25855 Filed 10–13–10; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 560

[Docket ID OTS–2010–0029]

RIN 1557–AC44

Alternatives to the Use of External Credit Ratings in the Regulations of the OTS

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Act) directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of credit-worthiness of a security or money market instrument and any references to or requirements in regulations regarding credit ratings. The agencies are also required under the Act to remove references or requirements of reliance on credit ratings and to substitute an alternative standard of credit-worthiness.

Through this ANPR, the OTS seeks comment on the implementation of section 939A with respect to its regulations (other than risk-based capital regulations, which are the subject of a separate ANPR issued jointly with the other Federal banking agencies), including alternative measures of credit-worthiness that may be used in lieu of credit ratings.

DATES: Comments on this ANPR must be received by November 15, 2010.

ADDRESSES: You may submit comments, identified by OTS–2010–0029, by any of the following methods:

- *Federal eRulemaking Portal:* "Regulations.gov": Go to *http://www.regulations.gov* and follow the instructions for submitting comments.
- *Mail:* Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, *Attention:* OTS–2010–0029.
- *Facsimile:* (202) 906–6518.
- *Hand Delivery/Courier:* Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, *Attention:* OTS–2010–0029.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change, including any personal information provided. Comments, including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.
- *Viewing Comments Electronically:* Go to *http://www.regulations.gov* and follow the instructions for reading comments.
- *Viewing Comments On-Site:* You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: William Magrini, Senior Project Manager, Risk Management Division, (202) 906–5744; or Marvin Shaw, Senior Attorney, Regulations and Legislation Division, Office of Chief Counsel, (202) 906–6639, Office Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPEMENTARY INFORMATION:

I. Background

Section 939A of the Act requires each Federal agency to review (1) any regulation issued by such agency that requires the use of an assessment of the credit-worthiness of a security or money market instrument; and (2) any references to or requirements in such regulations regarding credit ratings.[1] Each Federal agency must then modify any such regulations identified by the review * * * to remove any reference to or requirement of reliance on credit ratings and to substitute in such regulations such standard of credit-worthiness as each respective agency shall determine as appropriate for such regulations. In developing substitute standards of credit-worthiness, an agency shall seek to establish, to the extent feasible, uniform standards of credit-worthiness for use by the agency, taking into account the entities it regulates that would be subject to such standards.[2]

[1] Public Law 111–203, 124 Stat. 1376, section 939A (July 21, 2010).

[2] *Id.*

This ANPR describes the areas where the OTS's regulations, other than those that establish regulatory capital requirements, currently rely on credit ratings; sets forth the considerations underlying such reliance; and requests comment on potential alternatives to the use of credit ratings. On August 25, 2010, OTS and the other Federal banking agencies issued a separate joint advance notice of proposed rulemaking focused on the agencies' risk-based capital frameworks. (75 FR 52283)

II. OTS Regulations Referencing Credit Ratings

The non-capital regulations of OTS include various references to and requirements for use of a credit rating issued by a nationally recognized statistical rating organization (NRSRO).[3] For example, OTS's regulations regarding permissible investment securities reference or rely upon NRSRO credit ratings.[4] A description of these regulations is set forth below.

A. Investment Securities Regulations

The OTS's investment securities regulations at 12 CFR part 560 use credit ratings as a factor for determining the credit quality, liquidity/marketability, and appropriate concentration levels of investment securities purchased and held by savings associations. For example, under these rules, an investment security must be "Rated in one of the four highest categories as to the portion of the security in which the association is investing by a nationally recognized investment rating service at its most recently published rating before the date of purchase by the association."

Credit ratings are also used to determine marketability in the case of a security that is offered and sold pursuant to Securities and Exchange Commission Rule 144A. A 144A security is generally deemed by OTS to be marketable if it is rated investment grade.

In addition, credit ratings are used to determine concentration limits on certain investment securities. For example, Part 560.40 limits holdings of corporate debt securities of any one issuer that are rated in the third or fourth highest investment grade rating categories to 15 percent of the association's capital and surplus. For securities that are rated in the highest or second highest investment grade categories, that limit is 25 percent of the savings association's capital and surplus.

Current Safety and Soundness Standards

In addition to current regulatory provisions that generally limit savings associations to purchasing securities that are rated investment grade, OTS policy guidance also require that savings associations make the investments consistent with safe and sound banking practices. Specifically, savings associations must consider the interest rate, credit, liquidity, price and other risks presented by investments and the investment must be appropriate for the particular savings association. Whether a security is an appropriate investment for a particular association will depend upon a variety of factors, including the association's capital level, the security's impact on the aggregate risk of the portfolio, and management's ability to measure and manage bank-wide risks. In addition, an association must determine that there is adequate evidence that the obligor possesses resources sufficient to provide for all required payments on its obligations. Each association also must maintain records available for examination purposes adequate to demonstrate that it meets the above requirements.

OTS has issued guidance on safe and sound investment securities practices. OTS expects savings associations to understand the price sensitivity of securities before purchase (pre-purchase analysis) and on an ongoing basis.[5] Appropriate ongoing due diligence includes the ability to assess and manage the market, credit, liquidity, legal, operational, and other risks of investment securities. As a matter of sound practice, savings associations are expected to perform quantitative tests to ensure that they thoroughly understand the accompanying cash flow and interest rate risks of their investment securities.

Sound investment practices dictate additional due diligence for purchases of certain structured or complex investment securities. The more complex a security's structure, the more due diligence that savings association management should conduct. For securities with long maturities or complex options, management should understand the structure and price sensitivity of such securities purchased. For complex asset-backed securities, such as collateralized debt obligations, savings association management should ensure that they understand the security's structure and how the security will perform in different default environments.[6]

Alternative Standards

Four options for replacing the references to external credit ratings in OTS's investment securities regulations include the following.

1. Credit Quality Based Standard

One alternative would be to replace the references to credit ratings with a standard that is focused primarily on credit quality. OTS could adopt standards similar to those applied to unrated securities. Specifically, savings associations could be required to document, through their own credit assessment and analysis, that the security meets specified internal credit rating standards.

Under the current rules, a savings association may invest in a security if it is rated investment grade by an NRSRO. To demonstrate that a security is the credit equivalent of investment grade without using NRSROs ratings, a savings association would have to document, through its own credit assessment and analysis, that the security is a "pass" asset under its internal credit rating standards. However, because some internal rating systems "pass" some credit exposures that are not, or would not be, rated investment grade, a security will generally have to be rated higher than the bottom tier of internal credit rating "pass" standards in order to be the credit equivalent of investment grade.

If the OTS adopts a general credit-quality based test that does not rely on external credit ratings, it could require associations to determine that their investment securities meet certain credit quality standards. Savings associations could be required to document an internal credit assessment and analysis demonstrating that the issuer of a security is an entity that has an adequate capacity to meet its financial commitments, is subject only to moderate credit risk, and for whom expectations of default risk over the term of the security are low. OTS would require savings associations to document their credit assessment and analysis using systems and criteria similar to the savings association's internal loan credit grading system. These would be subject to examiner review and classification, similar to the process used for loan classifications.

[3] An NRSRO is an entity registered with the U.S. Securities and Exchange Commission (SEC) under section 15E of the Securities Exchange Act of 1934. *See,* 15 U.S.C. 78o–7, as implemented by 17 CFR 240.17g–1.

[4] *See generally,* 12 CFR part 560.40 and 560.42.

[5] OTS Thrift Bulletin TB–13a "Management of Interest Rate Risk, Investment Securities, and Derivative Activities."

[6] OTS Thrift Bulletin TB 73a, "Complex Investment Securities."

If this alternative were adopted, OTS would continue to expect savings associations to understand and manage the associated price, liquidity and other-related risks associated with their investment securities activities.

2. Investment Quality Based Standard

As an alternative to a standard that focuses solely on credit-worthiness, OTS could adopt a broader "investment quality" standard that, in addition to credit worthiness elements (such as the timely repayment of principal and interest and the probability of default), would also establish criteria for marketability, liquidity, and price risk associated with market volatility.

OTS's current investment securities regulations and guidance emphasize ratings and marketability. An investment quality based standard could reflect some combination of these considerations and place quantitative limits on a savings association's investment securities activities based on the levels and types of risks in its portfolio. As with the credit quality standard, OTS could require associations to document their credit assessment and analysis using systems and criteria similar to their internal loan credit grading system. Such reviews would be subject to examiner review and classification, similar to the process used for loan classifications.

Under such a standard, a security with a low probability of default may nevertheless be deemed "predominantly speculative in nature," and therefore impermissible, if, under the new standard, it is deemed to be subject to significant liquidity or market risk. This would be consistent with current OTS guidance, which warns that complex and illiquid instruments often can involve greater risk than actively traded, more liquid securities.[7] This higher potential risk arising from illiquidity is not always captured by standardized financial modeling techniques. Such risk is particularly acute for instruments that are highly leveraged or that are designed to benefit from specific, narrowly defined market shifts. If market prices or rates do not move as expected, the demand for such instruments can evaporate, decreasing the market value of the instrument below the modeled value.

3. Reliance on Internal Risk Ratings

A third alternative could establish a credit-worthiness standard that is based on a savings association's internal risk rating systems. OTS could require a savings association to document its credit assessment and analysis using systems and criteria similar to its internal loan credit rating system. Such reviews also would be subject to examiner review and classification, similar to the process used for loan classifications.

The bank regulatory agencies use a common risk rating scale to identify problem credits. The regulatory definitions are used for all credit relationships—commercial, retail, and those that arise outside lending areas, such as from capital markets. The regulatory ratings "special mention," "substandard," "doubtful," and "loss" identify different degrees of credit weakness. Therefore, for example, the rule could define all investments deemed "special mention" or worse as predominately speculative. Credits that are not covered by these definitions would be "pass" credits, for which no formal regulatory definition exists (because regulatory ratings currently do not distinguish among pass credits). Many banks and savings associations have internal rating systems that distinguish between levels of credit-worthiness in the regulatory "pass" grade. In these systems, "pass" grades that denote lower levels of credit-worthiness usually do not equate to investment grade as defined in the current rule.

Under the current rules, a security is not predominately speculative in nature if it is rated investment grade. Without the use of NSROs, savings associations would have to document, through their own credit assessment and analysis, that the security is a strong "pass" asset under its internal credit rating standards to demonstrate that a non-rated security is the credit equivalent of investment grade. Because most internal rating systems "pass" some credit exposures that are not, or would not be, rated investment grade, a security will generally have to be rated higher than the bottom tier of internal credit rating "pass" standards in order to be the credit equivalent of investment grade.

4. Reliance on External Information

A part of their process for making credit-worthiness determinations, savings associations would be allowed to consider external data, including credit analyses provided by third parties, that met standards established by OTS. In addition, alternative ways to measure credit risk might be to derive "implied ratings" from the market price of traded instruments. One type of such indicators is that derived from the equity prices. Another type is the bond market-implied rating base on the market price of debt instruments or credit derivatives such as credit default swaps.

Investors typically require a lower return for an investment with a lower risk of default. For example, the yield spread (difference between the yield on a corporate bond relative to a similar government bond) is often used as a measure of relative credit-worthiness, with reduction in the credit spread reflecting improvement in the issuer's perceived credit quality. Implied yield spreads could thus provide a useful market-based indication of credit-worthiness, provided that investors have sufficient information.

OTS would establish conditions under which savings associations could rely on external market data and information as part of their due diligence requirements.

III. Request for Comment

OTS is seeking public input as it begins reviewing its regulations pursuant to section 939A of the Dodd-Frank Act. In particular, OTS is seeking comment on alternative measures of credit-worthiness that may be used instead of credit ratings in the regulations described in this ANPR. Commenters are encouraged to address the specific questions set forth below; OTS also invites comment on any and all aspects of this ANPR.

General Questions

1. In some cases the regulations described in this ANPR use credit ratings for purposes other than measuring credit-worthiness (for example, the definition of "marketability" at 12 CFR part 560). Should the Dodd-Frank Act's requirement for the removal of references to credit ratings be construed to prohibit the use of credit ratings as a proxy for measuring other characteristics of a security, for example, liquidity or marketability?

2a. If continued reliance on credit ratings is permissible for purposes other than credit-worthiness, should OTS permit savings associations to continue to use credit ratings in their risk assessment process for the purpose of measuring the liquidity and marketability of investment securities, even though alternative measures to determine credit-worthiness would be prescribed?

2b. What alternative measures could the OTS and savings associations use to measure the marketability, and liquidity of a security?

3. What are the appropriate objectives for any alternative standards of credit-

[7] OTS Thrift Bulletin TB 73a, "Complex Investment Securities".

worthiness that may be used in regulations in place of credit ratings?

4. In evaluating potential standards of credit-worthiness, the following criteria appear to be most relevant; that is, any alternative to credit ratings should:

a. Provide for a reasonable and objective assessment of the likelihood of full repayment of principal and interest over the life of the security;

b. Foster prudent risk management;

c. Be transparent, replicable, and well defined;

d. Allow different banking organizations to assign the same assessment of credit quality to the same or similar credit exposures;

e. Allow for supervisory review;

f. Differentiate among investments in the same asset class with different credit risk; and

g. Provide for the timely and accurate measurement of negative and positive changes in investment quality, to the extent practicable.

Are these criteria appropriate? Are there other relevant criteria? Are there standards of credit-worthiness that can satisfy these criteria?

5. OTS recognizes that any measure of credit-worthiness likely will involve tradeoffs between more refined differentiation of credit-worthiness and greater implementation burden. What factors are most important in determining the appropriate balance between precise measurement of credit risk and implementation burden in considering alternative measures of credit-worthiness?

6. Would the development of alternatives to the use of credit ratings, in most circumstances, involve cost considerations greater than those under the current regulations? Are there specific cost considerations that OTS should take into account? What additional burden, especially at community and regional savings associations, might arise from the implementation of alternative methods of measuring credit-worthiness?

7. The credit rating alternatives discussed in this ANPR differ, in certain respects, to those being proposed by OTS and other federal banking agencies for regulatory capital purposes.[8] OTS believes such distinctions are consistent with current differences in the application and evaluation of credit quality for evaluating loans and investment securities and those used for risk-based capital standards. Are such distinctions warranted? What are the benefits and costs of using different standards for different regulations?

Alternatives for Replacing References to Credit Ratings in Part 560

8. What are the advantages and disadvantages of the alternative standards described in the **SUPPLEMENTARY INFORMATION**?

9. Should the credit-worthiness standard include only high quality and highly liquid securities? Should the standard include specific standards on probability of default? Should the standard vary by asset class? Are there other alternative credit-worthiness standards that should be considered? Should a combination of credit-worthiness standards be used, and if so, in what instances would this be preferred? Would different credit-worthiness standards be appropriate for different asset classes, probabilities of default, varying levels of liquidity, different types securities or money market instruments, etc?

10. If OTS relied upon internal rating systems, should the credit-worthiness standard include any pass grade or should it only be mapped to higher grades of pass?

11. Alternatively, should the banking regulators revise the current regulatory risk rating system to include more granularity in the pass grade and develop a credit-worthiness standard based upon the regulatory risk rating system?

12. Should OTS adopt standards for marketability and liquidity separate from the credit-worthiness standard? If so, how should this differ from the credit-worthiness standard?

13. Should an alternative approach take into account the ability of a security issuer to repay under stressed economic or market environments? If so, how should stress scenarios be applied?

14. Should an assessment of credit-worthiness link directly to a savings association's loan rating system (for example, consistent with the higher quality credit ratings)?

15. Should a savings association be permitted to consider credit assessments and other analytical data gathered from third parties that are independent of the seller or counterparty? What, if any, criteria or standards should the OTS impose on the use of such assessments and data?

16. Should a savings association be permitted to rely on an investment quality or credit quality determination made by another financial institution or another third party that is independent of the seller or counterparty? What, if any, criteria or standards should OTS impose on the use of such opinions?

17. Which alternative(s) would be most appropriate for smaller, community-oriented savings associations and why?

18. Are there other alternatives that ought to be considered?

19. What level of due diligence of a savings association should be required when considering the purchase of an investment security? How should OTS set minimum standards for monitoring the performance of an investment security over time so that savings associations effectively ensure that their investment securities remain "investment quality" as long as they are held?

Dated: October 6, 2010.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. 2010–25845 Filed 10–13–10; 8:45 am]

BILLING CODE P

[8] 75 FR 52283, August 25, 2010.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

RIN 3245–AF56

Small Business Investment Companies—Conflicts of Interest and Investment of Idle Funds

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration proposes to revise a rule which prohibits a small business investment company (SBIC) from providing financing to an Associate, as defined in the rules, unless it first obtains a conflict of interest exemption from SBA. The revision would eliminate the requirement for an exemption in the case of a follow-on investment in a small business concern by an SBIC and an Associate investment fund, where both parties invested previously on the same terms and conditions and where the follow-on investment would also be on the same terms and conditions as well as in the same proportions. In addition, this rule would implement two provisions of the Small Business Investment Act. First, it would bring the public notice requirement for conflict of interest transactions into conformity with statutory requirements. Second, it would expand the types of investments an SBIC is permitted to make with its "idle funds" (cash that is not immediately needed for fund operations or investments in small business concerns). Finally, the rule would remove an outdated cross-reference and eliminate a section that exactly

duplicates a provision found elsewhere in part 107.

DATES: Comments on the proposed rule must be received on or before November 15, 2010.

ADDRESSES: You may submit comments, identified by RIN 3245–AF56, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier:* Harry E. Haskins, Deputy Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SBA will post comments on *http://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov,* please submit the information to Carol Fendler, Investment Division, 409 Third Street, SW., Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make the final determination of whether it will publish the information or not.

FOR FURTHER INFORMATION CONTACT: Carol Fendler, Investment Division, Office of Capital Access, (202) 205–7559 or *sbic@sba.gov.*

SUPPLEMENTARY INFORMATION:

Section 107.730—Financings which constitute conflicts of interest. The Small Business Investment Act of 1958, as amended (SBI Act), authorizes SBA to adopt regulations to govern transactions that may constitute a conflict of interest and which may be detrimental to small business concerns, small business investment companies, their investors, or SBA. Accordingly, SBA promulgated 13 CFR 107.730, which generally prohibits financing transactions that involve a conflict of interest, unless the SBIC obtains a prior written exemption from SBA. The most common type of transaction requiring an exemption is "financing an Associate." Associates of an SBIC, as defined in § 107.50, encompass a broad range of related parties based on business, economic and family ties, both direct and indirect.

In addition to identifying transactions requiring a conflict of interest exemption, § 107.730 sets forth the circumstances under which an SBIC is permitted to co-invest with its Associates. The primary purpose of these provisions is to ensure that the terms of such co-investments are "fair and equitable" to the SBIC, *i.e.* that the SBIC is not being disadvantaged relative to an Associate. The co-investment rules include a number of "safe harbor" provisions under which the transaction is presumed to be fair and equitable to the SBIC; one of these safe harbors covers financings where the SBIC and its Associate invest at the same time and on the same terms and conditions. SBIC managers frequently seek to rely on this provision because they are involved in the management of more than one fund and would like to have the funds co-invest in a small business. SBA generally considers such co-investments to be beneficial because risk is spread across more than one entity. The small business may also benefit from having access to multiple investors.

It became apparent after adoption of the current § 107.730 that certain types of transactions could be characterized as both "co-investment with an Associate" and "financing an Associate." As with all other transactions that involve the financing of an Associate, SBA has required the SBIC to obtain a prior written exemption even if the financing would fall under the safe harbor for co-investments with Associates.

However, SBA believes the exemption requirement is unnecessarily burdensome for one particular type of transaction: The SBIC and an Associate investment fund (most typically a fund under common management) make an initial investment in a small business under the same terms and conditions, which include the acquisition by each fund of at least a 10% equity interest in the small business. This initial round of financing is a "co-investment with an Associate" and does not require a conflict of interest exemption. However, when the same two parties want to make a follow-on investment in the same small business, again under the same terms and conditions, the second and subsequent round(s) of financing are considered to be "financing an Associate" and do require a prior written exemption. This is because the Associate fund's 10% or greater equity interest causes the small business itself to be defined as an Associate of the SBIC under paragraph (8)(ii) of the definition in § 107.50. While SBA would approve a conflict of interest exemption for a follow-on financing transaction on the same terms and conditions by an SBIC and its Associate fund, the Agency is concerned that the exemption requirement may cause unnecessary delays in making financing available to the small business, and imposes a significant administrative burden on both the SBIC and SBA.

To address this concern, this proposed rule adds an exception to 13 CFR 107.730(a)(1). Currently, this paragraph prohibits the financing of an Associate without a prior written conflict of interest exemption. Under the new exception, a prior written exemption would not be required for an Associate financing that satisfies all of the following conditions:

1. The small business that will receive the financing is an Associate of the SBIC, pursuant to paragraph (8)(ii) of the Associate definition, only because an Associate investment fund already holds a 10% or greater equity interest in the small business.

2. The SBIC and the Associate fund previously invested in the small business at the same time and on the same terms and conditions.

3. The SBIC and the Associate fund will provide follow-on financing to the small business at the same time and on the same terms and conditions.

4. The SBIC and the Associate fund will provide follow-on financing to the small business in the same proportionate dollar amounts as their respective investments in the previous round of financing (*e.g.,* if the SBIC invested $2 million and the Associate invested $1 million in the previous round, their follow-on investments would be in the same 2:1 ratio).

The revision will allow transactions meeting these specific conditions to be governed only by the co-investment provisions of § 107.730(d) rather than by the "Associate financing" provisions of the current § 107.730(a), thereby returning to SBA's original intent when it promulgated the co-investment rules. SBA expects that this change will help to eliminate delays in making follow-on financing available to small businesses while providing appropriate protection for small business concerns, investors in SBICs and the Federal government.

SBA is also proposing a change to § 107.730(g), which requires public notice of all requests by SBICs for conflict of interest exemptions. The current language requires public notice by both SBA (via publication in the **Federal Register**) and the requesting SBIC (via publication in a newspaper in the locality most directly affected by the transaction). These disclosure requirements are more extensive than those required by section 312 of the SBI Act, from which the local publication requirement was removed by section 3 of Public Law 107–100 (December 21, 2001). This rule would bring the regulation into conformity with the statute by eliminating the requirement for public notice in the affected locality; the requirement for public notice in the **Federal Register** would not be affected.

Section 107.530—Restrictions on investments of idle funds by leveraged Licensees. An SBIC holding idle funds may invest those funds only as permitted by § 107.530(b). The permitted investments are all relatively short term and bear minimal or no risk of loss, such as direct obligations of the United States that mature within 15 months of the date of investment. The current regulation largely follows section 308(b) of the SBI Act (15 U.S.C. 687(b)), but does not reflect an amendment made by Public Law 108–447, Division K, section 202 (December 8, 2004) that allows an SBIC to invest "in mutual funds, securities, or other instruments that consist of, or represent pooled assets of" the various direct investment vehicles permitted by section 308(b). 15 U.S.C. 687(b)(3). For example, this provision allows an SBIC to invest idle funds in a money market account, as long as the money market fund invests exclusively in permitted instruments. This proposed rule would bring the regulation into conformity with the statute.

Section 107.855—Interest rate ceiling and limitations on fees charged to Small Businesses ("Cost of Money"). The proposed rule would correct an error by removing § 107.855(g)(10). This paragraph provides an exclusion from the Cost of Money calculation in the form of a cross-reference to the non-existent § 107.855(i).

Section 107.505—Facsimile requirement. The proposed rule would eliminate duplication by removing § 107.505, which requires an SBIC to have the capability to receive fax messages. This section repeats language already found in § 107.504(b).

Compliance with Executive Orders 12866, 12988 and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this rule is not a "significant" regulatory action under Executive Order 12866.

Executive Order 12988

This action meets applicable standards set forth in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or presumptive effect.

Executive Order 13132

The proposed rule would not have substantial direct effects on the States, or the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, Federalism, SBA determines that this proposed rule has no federalism implications warranting the preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

For purposes of the Paperwork Reduction Act, (PRA) 44 U.S.C. Ch. 35, SBA has determined that this rule would not impose any new reporting or recordkeeping requirements. The requirement for SBICs to submit requests for conflict of interest exemptions is not an information collection as that term is defined by the PRA because the requests do not involve any standardized or identical reporting, recordkeeping or disclosure requirements. Rather, each request for exemption is unique to the circumstances of the particular SBIC. In any event, to the extent that SBICs are currently required to submit conflict of interest exemptions under the circumstances described in this proposed rule, that requirement would no longer exist.

Compliance With the Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an Initial Regulatory Flexibility Act (IRFA) analysis which describes whether the impact of the rule will have a significant economic impact on a substantial number of small entities. However, § 605 of the RFA allows an agency to certify a rule, in lieu of preparing an IRFA, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. This proposed rule would affect all SBICs, of which there are currently 309. SBA estimates that approximately 75% of these SBICs are small entities. Therefore, SBA has determined that this proposed rule would have an impact on a substantial number of small entities. However, SBA has determined that the impact on entities affected by the rule would not be significant. The conflict of interest provision would eliminate the current requirement for SBICs to obtain a conflict of interest exemption for a particular type of transaction. This change is expected to reduce the regulatory burden on SBICs and allow them to close such financing transactions with less delay.

SBA asserts that the economic impact of the rule, if any, would be minimal and entirely beneficial to small SBICs. Accordingly, the Administrator of the SBA hereby certifies that this rule would not have a significant impact on a substantial number of small entities.

List of Subjects in 13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, the Small Business Administration proposes to amend part 107 of title 13 of the Code of Federal Regulations as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681 *et seq.,* 683, 687(c), 687b, 687d, 687g, 687m, Pub. L. 106–554, 114 Stat. 2763; and Pub. L. 111–5, 123 Stat. 115.

§ 107.505 [Removed]

2. Remove § 107.505.

3. Amend § 107.530 by redesignating paragraphs (b)(3) through (b)(6) as (b)(4) through (b)(7) and adding a new paragraph (b)(3) to read as follows:

§ 107.530 Restrictions on investments of idle funds by leveraged Licensees.

* * * * *

(b) *Permitted investments of idle funds.* * * *

(3) Mutual funds, securities, or other instruments that exclusively consist of, or represent pooled assets of, investments described in paragraphs (b)(1) or (b)(2) of this section; or

* * * * *

4. Amend § 107.730 by revising paragraphs (a)(1) and (g) to read as follows:

§ 107.730 Financings which constitute conflicts of interest.

(a) * * *

(1) Provide Financing to any of your Associates, except for a Financing to an Associate that meets all of the following conditions:

(i) The Small Business that receives the Financing is your Associate, pursuant to paragraph (8)(ii) of the Associate definition in § 107.50, only because an investment fund that is your Associate holds a 10% or greater equity interest in the Small Business.

(ii) You and the Associate investment fund previously invested in the Small

Business at the same time and on the same terms and conditions.

(iii) You and the Associate investment fund are providing follow-on financing to the Small Business at the same time, on the same terms and conditions, and in the same proportionate dollar amounts as your respective investments in the previous round(s) of financing (for example, if you invested $2 million and your Associate invested $1 million in the previous round, your respective follow-on investments would be in the same 2:1 ratio).

* * * * *

(g) *Public notice.* Before granting an exemption under this § 107.730, SBA will publish notice of the transaction in the **Federal Register**.

§ 107.855 [Amended]

5. Amend § 107.855 by removing paragraph (g)(10) and redesignating current paragraphs (g)(11) through (g)(13) as (g)(10) through (g)(12).

Dated: October 6, 2010.

Karen G. Mills,

Administrator.

[FR Doc. 2010–25729 Filed 10–13–10; 8:45 am]

BILLING CODE 8025–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 39 and 140

RIN 3038–AC98, 3038–AD02

Financial Resources Requirements for Derivatives Clearing Organizations

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is proposing rules to implement new statutory provisions enacted by Title VII and Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The proposed regulations establish financial resources requirements for derivatives clearing organizations (DCOs) for the purpose of ensuring that they maintain sufficient financial resources to enable them to perform their functions in compliance with the Commodity Exchange Act and the Dodd-Frank Act.

DATES: Submit comments on or before December 13, 2010.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Agency Web Site: http://www.cftc.gov.* Follow the instructions for submitting comments on the Web site.
- *E-mail: DCOSIDCOfinres@cftc.gov.* Include the RIN number in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9.[1]

FOR FURTHER INFORMATION CONTACT: John C. Lawton, Deputy Director and Chief Counsel, 202–418–5480, *jlawton@cftc.gov,* Phyllis P. Dietz, Associate Director, 202–418–5449, *pdietz@cftc.gov,* or Eileen A. Donovan, Special Counsel, 202–418–5096, *edonovan@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21 Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

A. Title VII

On July 21, 2010, President Obama signed the Dodd-Frank Act.[2] Title VII of the Dodd-Frank Act[3] amended the Commodity Exchange Act (CEA)[4] to establish a comprehensive regulatory framework to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating rigorous recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.

Section 725(c) of the Dodd-Frank Act amends Section 5b(c)(2) of the CEA, which sets forth core principles with which a DCO must comply to be registered and to maintain registration as a DCO.

The core principles were added to the CEA by the Commodity Futures Modernization Act of 2000 (CFMA).[5] Consistent with the CFMA's principles-based approach to regulation, the Commission did not adopt implementing rules and regulations, but instead promulgated guidance for DCOs on compliance with the core principles.[6] However under Section 5b(c)(2), as amended by the Dodd-Frank Act, Congress expressly confirmed that the Commission may adopt implementing rules and regulations pursuant to its rulemaking authority under Section 8a(5) of the CEA.[7]

The Commission continues to believe that, where possible, each DCO should be afforded an appropriate level of discretion in determining how to operate its business within the statutory framework. At the same time, the Commission recognizes that specific bright-line regulations may be necessary in order to facilitate DCO compliance with a given core principle, and ultimately, to protect the integrity of the U.S. clearing system. Accordingly, in developing the proposed regulation, the Commission has endeavored to strike an appropriate balance between establishing general prudential standards and prescriptive requirements.

Core Principle B, as amended by the Dodd-Frank Act, requires a DCO to possess financial resources that, at a minimum, exceed the total amount that would enable the DCO to meet its financial obligations to its clearing members[8] notwithstanding a default by

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1.

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

[3] Pursuant to Section 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[4] 7 U.S.C. 1 *et seq.*

[5] *See* Commodity Futures Modernization Act of 2000, Public Law 106–554, 114 Stat. 2763 (2000).

[6] *See* Appendix A to Part 39, 17 CFR Part 39. The Commission notes that it intends to propose removal of Appendix A, in its entirety, as part of a future proposed rulemaking.

[7] Section 8a(5) of the CEA authorizes the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

[8] The term "clearing members" refers to entities that have a direct financial relationship to a DCO, regardless of the DCO's organizational structure,

Continued

the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions; and enable the DCO to cover its operating costs for a period of 1 year, as calculated on a rolling basis. The Commission is proposing to adopt Regulation 39.11 to establish requirements that a DCO will have to meet in order to comply with Core Principle B.

B. Title VIII

Section 802(b) of the Dodd-Frank Act states that the purpose of Title VIII is to mitigate systemic risk in the financial system and to promote financial stability. Section 804 authorizes the Financial Stability Oversight Council (Council) to designate entities involved in clearing and settlement as systemically important.[9]

Section 805(a) of the Dodd-Frank Act allows the Commission to prescribe regulations for those DCOs that the Council has determined are systemically important. The Commission is also proposing to adopt some additional or enhanced requirements for systemically important DCOs (SIDCOs).

The Commission requests comment on all aspects of the proposed rules, as well as comment on the specific provisions and issues highlighted in the discussion below. The Commission further requests comment on an appropriate effective date for final rules, once adopted.

II. Proposed Regulations

A. DCOs

1. Amount of Financial Resources Required

As a central counterparty, a DCO must have sufficient financial resources to be able to withstand a potential default by one of its clearing members.[10] In the event of a default, a DCO would continue to have obligations to the clearing members that are owed variation settlement payments and, therefore, the DCO must have sufficient liquid resources to meet those obligations in a timely fashion. Proposed Regulation 39.11(a)(1) would require a DCO to maintain sufficient financial resources to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the DCO in extreme but plausible market conditions. This standard is consistent with the standard set forth in Core Principle B, and is also consistent with current international standards.[11]

There may be some instances in which one clearing member controls another clearing member or in which a clearing member is under common control with another clearing member. The Commission proposes to treat such affiliated clearing members as a single entity for purposes of determining the largest financial exposure because the default of one affiliate could have an impact on the ability of the other to meet its financial obligations to the DCO.[12] However, to the extent that each affiliated clearing member is treated as a separate entity by the DCO, with separate capital requirements, separate guaranty fund obligations, and separate potential assessment liability, the Commission requests comment on whether a different approach might be warranted.

Separately, proposed Regulation 39.11(a)(2) would require a DCO to maintain sufficient financial resources to cover its operating costs for at least one year, calculated on a rolling basis. This standard is consistent with the standard set forth in amended Core Principle B. It is also consistent with established accounting standards, under which an entity's ability to continue as a going concern comes into question if there is evidence that the entity may be unable to continue to meet its obligations in the next 12 months without substantial disposition of assets outside the ordinary course of business, restructuring of debt, externally forced revisions of its operations, or similar actions.[13]

2. Types of Financial Resources

a. Default Resources

Proposed Regulation 39.11(b)(1) lists the types of financial resources that would be available to a DCO to satisfy the requirements of proposed Regulation 39.11(a)(1): (1) The margin of the defaulting clearing member; (2) the DCO's own capital; (3) the guaranty fund deposits of the defaulting clearing member and non-defaulting clearing members; (4) default insurance; (5) if permitted by the DCO's rules, potential assessments for additional guaranty fund contributions on non-defaulting clearing members; and (6) any other financial resource deemed acceptable by the Commission. A DCO would be able to request an informal interpretation from CFTC staff on whether or not a particular financial resource may be acceptable to the Commission.

In the event of a default by one of its clearing members, a DCO would first seize the margin of the defaulting clearing member. If the margin were insufficient to cure the default, the DCO might use its own capital to cover the shortfall. Currently, Commission regulations do not prescribe capital requirements for DCOs. The Commission invites comment on whether it should consider adopting such requirements and if so, what those requirements should be.

Clearing members also are typically required to maintain a deposit, in the form of cash and/or securities, in a guaranty fund, which may be used by the DCO to cover any loss sustained as a result of the failure of a clearing member to discharge its obligations to the DCO. In the event of a default, the DCO may draw on the defaulting clearing member's deposit to satisfy its counterparty obligations. If the deposit is insufficient, the DCO may draw on the guaranty fund deposits of non-defaulting clearing members.

In addition, a DCO may have an assessment power that allows it to demand additional funds from non-defaulting clearing members, up to a specified amount, if the guaranty fund has been exhausted. The size of a clearing member's potential assessment obligation is usually established by a formula set forth in the DCO's rules.

Unlike margin or a guaranty fund, assessment powers are not resources on

i.e., whether or not the DCO is a membership organization. Clearing members include futures commission merchants (FCMs) that clear on behalf of customers or themselves, and non-FCMs that clear solely on behalf of themselves. *See also* the definition of the term "clearing member" in CFTC Regulation 1.3(c).

[9] Commission staff has been engaged in discussions with staff of other members of the Council concerning which entities might qualify.

[10] Each DCO determines for itself what constitutes a "default," but generally a clearing member is considered to be in default when it fails to fulfill any obligation to the DCO.

[11] In November 2004, the Task Force on Securities Settlement Systems, jointly established by the Committee on Payment and Settlement Systems (CPSS) of the central banks of the Group of Ten countries and the Technical Committee of the International Organization of Securities Commissions (IOSCO), issued its Recommendations for Central Counterparties. Under Recommendation 5, a central counterparty must maintain sufficient financial resources to withstand, at a minimum, a default by the participant to which it has the largest exposure in extreme but plausible market conditions. However, the Commission notes that CPSS and IOSCO are currently reviewing this standard and it may be revised.

[12] For example, the positions of each clearing member would be margined separately and would be stress tested separately. However, losses of each would be aggregated and gains would not offset losses.

[13] *See* American Institute of Certified Public Accountants Auditing Standards Board Statement of Auditing Standards No. 59, The Auditor's Consideration of an Entity's Ability to Continue as a Going Concern, as amended.

hand but a promise to pay. A clearing member, however, may have a strong financial incentive to pay an assessment. If a clearing member failed to pay its assessment obligation, that failure would be treated as a default and the clearing member would be subject to liquidation of its positions and forfeiture of the margin in its proprietary account. Thus, in addition to a potential general interest in maintaining the viability of the DCO going forward, a non-defaulting clearing member may have a specific incentive to pay an assessment depending on the size and profitability of its positions and the margin on deposit relative to the size of the assessment.

No U.S. futures clearinghouse has ever had to exercise its assessment power. In light of the apparent low probability of a default of such magnitude as to require assessments, the use of assessment power as a backstop rather than increasing the size of guaranty funds seems to have been an efficient allocation of capital. The growth in clearing of swaps, however, creates new risks that the Commission must evaluate.

The Commission is proposing that DCOs put rules and procedures in place to ensure timely payment of assessments by clearing members. First, each DCO must require its clearing members to have the ability to meet an assessment within the time frame of a normal variation settlement cycle. Second, each DCO must monitor, on a continual basis, each clearing member's financial and operational capacity to pay potential assessments.

As discussed below, the Commission is proposing to limit the degree to which assessment powers may be considered to be an available financial resource. The Commission invites comment on whether these limits and requirements are appropriate. More generally, the Commission is also seeking comment on whether assessment powers should be considered to be a financial resource available to satisfy the requirements of proposed Regulation 39.11(a)(1).

b. Operating Resources

Proposed Regulation 39.11(b)(2) lists the types of financial resources that would be available to a DCO to satisfy the requirements of proposed Regulation 39.11(a)(2): (1) The DCO's own capital; and (2) any other financial resource deemed acceptable by the Commission. A DCO would be able to request an informal interpretation from CFTC staff on whether or not a particular financial resource may be acceptable to the Commission. The Commission invites commenters to recommend particular financial resources, and explain the basis, for inclusion in the final regulation. In this regard, the Commission notes that the proposed rule does not specify that a DCO must hold equity capital. The Commission requests comment on whether such a provision would be appropriate.

c. Allocation of Resources

Proposed Regulation 39.11(b)(3) would allow a DCO to allocate a financial resource, in whole or in part, to satisfy the requirements of either proposed Regulation 39.11(a)(1) (default risk) or proposed Regulation 39.11(a)(2) (operating costs), but not both, and only to the extent the use of that financial resource is not otherwise limited by the CEA, Commission regulations, the DCO's rules, or any contractual arrangements to which the DCO is a party. In the event that a default would force a DCO to cease operations, the DCO would need sufficient financial resources to cover the default and conduct an orderly wind down of its business.

3. Computation of the Financial Resources Requirement

Proposed Regulation 39.11(c)(1) would require a DCO to perform stress testing on a monthly basis in order to make a reasonable calculation of the financial resources it needs to meet the requirements of proposed Regulation 39.11(a)(1). In the first instance, the DCO would have reasonable discretion in determining the methodology it uses to make the calculation.[14] Because effective stress testing involves a great deal of judgment, the Commission is not proposing that DCOs test a particular scenario. Rather, the proposed regulation requires DCOs to take into account both historical data and hypothetical situations. (By definition, a stress test using only historical data would never cover a market move setting a new record.) Within those guidelines, DCOs would have discretion in selecting scenarios, subject to Commission review.

The Commission would review the methodology and require changes as appropriate. The methodology must address any unique risks associated with particular products, such as the jump to default risk and compounding effects of credit default swaps.

Because of the comprehensive nature of the stress tests required for determining the size of the financial resources package, the Commission is proposing that these tests be conducted monthly. As will be discussed in a later rulemaking,[15] the Commission is likely to require more frequent stress testing in connection with DCO risk management programs. Such tests would be conducted for different purposes and might use different inputs. The Commission requests comment on whether monthly tests are appropriate for purposes of calculating required financial resources.

Proposed Regulation 39.11(c)(2) would require a DCO to make a reasonable calculation each month of the financial resources it needs to meet the requirements of proposed Regulation 39.11(a)(2). In the first instance, the DCO would have reasonable discretion in determining the methodology it uses to make the calculation. However, the Commission may review the methodology and require changes as appropriate.

4. Valuation of Financial Resources

Proposed Regulation 39.11(d)(1) would require a DCO, no less frequently than monthly, to calculate the current market value of each financial resource used to meet its obligations under proposed Regulation 39.11(a). A DCO would be required to perform the valuation at other times as appropriate, because market values may fluctuate and proposed Regulation 39.11(a) requires the DCO to be able to meet its obligations on a rolling basis. When valuing a financial resource, a DCO would be required to reduce the value, as appropriate, to reflect any market or credit risk specific to that particular resource, *i.e.,* apply a haircut. The Commission would permit each DCO to exercise its discretion in determining the applicable haircuts. However, such haircuts would have to be evaluated on a quarterly basis, would be subject to Commission review, and would have to be acceptable to the Commission.

Notwithstanding a DCO's general discretion in applying haircuts, proposed Regulation 39.11(d)(2)(i) would require a 30 percent haircut on the value of a DCO's assessment power. This is because in the event of a default, the defaulting clearing member would not be able to pay its assessment and other clearing members might also be unable or unwilling to pay. Based on the significant percentage of total margin that may be attributable to a few of the largest clearing members, failure to pay

[14] This is consistent with DCO Core Principle A, which gives a DCO "reasonable discretion in establishing the manner in which it complies with the core principles." *See* Section 5b(c)(2)(A) of the CEA, 7 U.S.C. 7a–1(c)(2)(A).

[15] The Commission will propose, at a later time, additional regulations to implement Core Principle D (risk management).

assessments could approach the 30 percent level. The Commission invites comment on whether this proposed valuation of assessments is appropriate.

To further increase the likelihood that the DCO will have resources immediately available to meet a default, the Commission is proposing that, in calculating the financial resources available to meet its obligations, a DCO may only count the value of assessments, after the haircut, to meet up to 20 percent of the resources requirement generated by the stress testing. The Commission requests comment on this restriction.

5. Liquidity of Financial Resources

In assessing the adequacy of a DCO's financial resources, the liquidity of resources must be considered. For example, the time span of an intra-day settlement cycle (from the time positions are marked to market until the time clearing members are required to pay) may be only a few hours. In the event of a clearing member defaulting on a payment to the DCO during the intra-day settlement cycle, the DCO would need access to liquid assets easily convertible to cash. DCOs often use committed lines of credit to provide this liquidity.

Proposed Regulation 39.11(e)(1) would require a DCO to have financial resources sufficiently liquid to enable the DCO to fulfill its obligations as a central counterparty during a one-day settlement cycle.

In particular, the proposed regulations would require a DCO to have sufficient capital in the form of cash to cover the average daily settlement variation pay per clearing member over the last fiscal quarter. For purposes of this calculation, if a clearing member had pays in both its house and customer accounts, the amount would be the sum of the two pays. If the clearing member had a pay in its house account and a collect in its customer account, the amount would be that of the house pay. If the clearing member had collects in both of its accounts, that day's variation settlement would not be included in the calculation. The DCO would be permitted to take into account a committed line of credit or similar facility for the purpose of meeting the remainder of the liquidity requirement.

The Commission requests comment on the proposed liquidity standards. In particular, the Commission requests comment on whether the liquidity requirement should cover more than a one-day cycle. The Commission also requests comment on what standards might be applicable to lines of credit. For example, should the Commission require that there be a diversified set of providers or that a line of credit have same-day drawing rights?

Proposed Regulation 39.11(e)(2) would require DCOs to maintain unencumbered liquid financial assets in the form of cash or highly liquid securities, equal to six months' operating costs. The Commission believes that having six months' worth of unencumbered liquid financial assets would give a DCO time to liquidate the remaining financial assets it would need to continue operating for the last six months of the required one-year period. If a DCO does not have six months' worth of unencumbered liquid financial assets, it may use a committed line of credit or similar facility to satisfy this requirement.

The Commission notes that a committed line of credit or similar facility is not listed in proposed Regulations 39.11(b)(1) or 39.8(b)(2) as a financial resource available to a DCO to satisfy the requirements of proposed Regulations 39.11(a)(1) and 39.11(a)(2), respectively. A DCO may only use a committed line of credit or similar facility to meet the liquidity requirements set forth in proposed Regulations 39.11(e)(1) and 39.11(e)(2).

To the extent that a DCO relies on a guaranty fund, adequate liquidity is crucial. To address liquidity concerns, proposed Regulation 39.11(e)(3) provides that: (i) Assets in a guaranty fund must have minimal credit, market, and liquidity risks and must be readily accessible on a same-day basis, (ii) cash balances must be invested or placed in safekeeping in a manner that bears little or no principal risk, and (iii) letters of credit are not a permissible asset for a guaranty fund.

6. Reporting Requirements

Under proposed Regulation 39.11(f)(1), at the end of each fiscal quarter, or at any time upon Commission request, a DCO would be required to report to the Commission: (i) The amount of financial resources necessary to meet the requirements set forth in the regulation; and (ii) the value of each financial resource available to meet those requirements. The DCO would have to include with its report a financial statement, including the balance sheet, income statement, and statement of cash flows, of the DCO or its parent company (if the DCO does not have an independent financial statement and the parent company's financial statement is prepared on a consolidated basis). If one of the financial resources a DCO is using to meet the regulation's requirements is a guaranty fund, the DCO would also have to report the value of each individual clearing member's guaranty fund deposit.

Proposed Regulation 39.11(f)(2) requires a DCO to provide the Commission with sufficient documentation that explains both the methodology it used to calculate its financial requirements and the basis for its determinations regarding valuation and liquidity. The DCO also must provide copies of any agreements establishing or amending a credit facility, insurance coverage, or other arrangement that evidences or otherwise supports its conclusions. The sufficiency of the documentation would be determined by the Commission in its sole discretion.

A DCO would have 17 business days[16] from the end of the fiscal quarter to file its report, but would also be able to request an extension of time from the Commission.

B. SIDCOs

As DCOs, SIDCOs would remain subject to the requirements of Title VII and the regulations thereunder, except to the extent the Commission promulgated higher standards pursuant to Title VIII. With regard to Core Principle B, the Commission is proposing higher standards in two respects, as described below.

1. Amount of Financial Resources Required

Because the failure of a SIDCO to meet its obligations would have a greater impact on the financial system than the failure of other DCOs, the Commission is proposing that SIDCOs be required to meet a higher standard. Specifically, proposed Regulation 39.29(a) would require a SIDCO to maintain sufficient financial resources to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure for the SIDCO in extreme but plausible market conditions.

A fundamental premise of the Dodd-Frank Act is that more over-the-counter (OTC) products must be brought into the cleared environment. Although no U.S. futures clearinghouse has ever had more than one clearing member default at a time, the size and complexity of the OTC derivatives markets may increase the chance that more than one clearing member could default simultaneously. Consequently, the Commission has determined that SIDCOs should be

[16] This filing deadline is consistent with the deadline imposed on FCMs for the filing of monthly financial reports. *See* 17 CFR 1.10(b).

subject to regulations that increase their ability to contain the effects of such defaults.

2. Valuation of Financial Resources

In order to add another layer of protection for SIDCOs, proposed Regulation 39.29(b) would require that a SIDCO may not count the value of assessments to meet the obligations arising from a default by the clearing member creating the single largest financial exposure. This means that a SIDCO would be required to hold a greater percentage of its financial resources in margin and the guaranty fund than a DCO that is not a SIDCO.

However, because the Commission believes that assessment powers can be a capital efficient means of providing a back-up source of funding, the Commission is proposing to permit SIDCOs to count the value of assessments, after the 30 percent haircut, to meet up to 20 percent of the obligations arising from a default by the clearing member creating the second largest financial exposure. This is the standard proposed for non-systemically important DCOs in connection with the largest potential exposure.

The Commission requests comment on the proposed higher standards for SIDCOs. In particular, the Commission requests comment on the potential competitive effects of imposing higher standards on a subset of DCOs.

III. Technical Amendments

Proposed Regulation 140.94 would allow the Commission to delegate the authority to perform certain functions that are reserved to the Commission under proposed Regulation 39.11. Specifically, the Director of the Division of Clearing and Intermediary Oversight would be given the authority to deem a financial resource acceptable under proposed Regulations 39.11(b)(1)(vi) and (b)(2)(ii); to review methodology and require changes under proposed Regulations 39.11(c)(1) and (c)(2); to request information under proposed Regulation 39.11(f)(1); and to grant an extension of the filing deadline for financial reports in accordance with proposed Regulation 39.11(f)(4).

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[17] The rules proposed by the Commission will affect only DCOs (some of which will be designated as SIDCOs). The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its regulations on small entities in accordance with the RFA.[18] The Commission has previously determined that DCOs are not small entities for the purpose of the RFA.[19] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the proposed rules will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

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 control number. OMB has not yet assigned a control number to the new collection. The Paperwork Reduction Act of 1995 (PRA)[20] imposes certain requirements on Federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. This proposed rulemaking would result in new collection of information requirements within the meaning of the PRA. The Commission therefore is submitting this proposal to the Office of Management and Budget (OMB) for review. If adopted, responses to this collection of information would be mandatory. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR Part 145, "Commission Records and Information." In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the CEA, from making public "data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers." The Commission is also required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities/Persons

The proposed regulations require each respondent to file information with the Commission on a quarterly basis, which would result in four annual responses per respondent. Commission staff estimates that each respondent would expend 10 hours to prepare each filing required under the proposed regulations. Commission staff estimates that it would receive filings from 12 respondents annually. Accordingly the burden in terms of hours would in the aggregate be 40 hours annually per respondent and 480 hours annually for all respondents.

Commission staff estimates that respondents could expend up to $1,840 annually, based on an hourly wage rate of $46, to comply with the proposed regulations. This would result in an aggregated cost of $22,080 per annum (12 respondents × $1,840).

2. Information Collection Comments

The Commission invites the public and other federal agencies to comment on any aspect of the reporting and recordkeeping burdens discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comment in order to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Comments may be submitted directly to the Office of Information and Regulatory Affairs, by fax at (202) 395–6566 or by e-mail at *OIRAsubmissions@omb.eop.gov.* Please provide the Commission with a copy of submitted comments so that all comments can be summarized and addressed in the final rule preamble. Refer to the Addresses section of this notice of proposed rulemaking for comment submission instructions to the Commission. A copy of the supporting statements for the collections of information discussed above may be obtained by visiting RegInfo.gov. 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.

[17] 5 U.S.C. 601 *et seq.*

[18] 47 FR 18618 (Apr. 30, 1982).

[19] *See* 66 FR 45605, 45609 (August 29, 2001).

[20] 44 U.S.C. 3501 *et seq.*

C. Cost-Benefit Analysis

Section 15(a) of the CEA requires that the Commission, before promulgating a regulation under the CEA or issuing an order, consider the costs and benefits of its action. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or determine whether the benefits of the rule outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any one of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the CEA.

The Commission has evaluated the costs and benefits of the proposed regulations in light of the specific considerations identified in Section 15(a) of the CEA, as follows:

1. *Protection of market participants and the public.* The proposed regulations would require DCOs to continually assess and monitor the adequacy of their financial resources under standards established by the Commission. This would further the goal of avoiding market disruptions and financial losses to market participants and the general public.

2. *Efficiency and competition.* The proposed regulations would promote financial strength and stability, thereby fostering efficiency and a greater ability to compete in the broader financial markets. The proposed regulations would reward efficiency insofar as DCOs that operate efficiently would have lower operating costs and therefore would require fewer resources to comply with the regulations.

3. *Financial integrity of futures markets and price discovery.* The proposed regulations are designed to ensure that DCOs can sustain their market operations and meet their financial obligations to market participants, thus contributing to the financial integrity of the futures and options markets as a whole. This, in turn, further supports the price discovery and risk transfer functions of such markets.

4. *Sound risk management practices.* The proposed regulations, by setting specific standards with respect to how DCOs should assess, monitor, and report the adequacy of their financial resources, would contribute to their maintenance of sound risk management practices and further the goal of minimizing systemic risk.

5. *Other public considerations.* As highlighted by recent events in the global credit markets, maintaining sufficient financial resources is a critical aspect of any financial entity's risk management system, and ultimately contributes to the goal of stability in the broader financial markets. Therefore, the Commission believes it is prudent to include financial resources requirements for entities applying to become or operating as DCOs.

Accordingly, after considering the five factors enumerated in the CEA, the Commission has determined to propose the regulations set forth below.

List of Subjects in 17 CFR Parts 39 and 140

Commodity futures, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission proposes to amend 17 CFR parts 39 and 140 as follows:

PART 39—DERIVATIVES CLEARING ORGANIZATIONS

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

Authority: 7 U.S.C. 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

2. Add § 39.11 to read as follows:

§ 39.11 Financial resources requirements.

(a) *General rule.* A derivatives clearing organization shall maintain financial resources sufficient to cover its exposures with a high degree of confidence and to enable it to perform its functions in compliance with the core principles set out in section 5b of the Act. A derivatives clearing organization shall identify and adequately manage its general business risks and hold sufficient liquid resources to cover potential business losses that are not related to clearing members' defaults, so that the derivatives clearing organization can continue to provide services as an ongoing concern. Financial resources shall be considered sufficient if their value, at a minimum, exceeds the total amount that would:

(1) Enable the derivatives clearing organization to meet its financial obligations to its clearing members notwithstanding a default by the clearing member creating the largest financial exposure for the derivatives clearing organization in extreme but plausible market conditions; *Provided that* if a clearing member controls another clearing member or is under common control with another clearing member, the affiliated clearing members shall be deemed to be a single clearing member for purposes of this provision; and

(2) Enable the derivatives clearing organization to cover its operating costs for a period of at least one year, calculated on a rolling basis.

(b) *Types of financial resources.* (1) Financial resources available to satisfy the requirements of paragraph (a)(1) may include:

(i) Margin of a defaulting clearing member;

(ii) The derivatives clearing organization's own capital;

(iii) Guaranty fund deposits;

(iv) Default insurance;

(v) Potential assessments for additional guaranty fund contributions, if permitted by the derivatives clearing organization's rules; and

(vi) Any other financial resource deemed acceptable by the Commission.

(2) Financial resources available to satisfy the requirements of paragraph (a)(2) may include:

(i) The derivatives clearing organization's own capital; and

(ii) Any other financial resource deemed acceptable by the Commission.

(3) A financial resource may be allocated, in whole or in part, to satisfy the requirements of either paragraph (a)(1) or paragraph (a)(2), but not both paragraphs, and only to the extent the use of such financial resource is not otherwise limited by the Act, Commission regulations, the derivatives clearing organization's rules, or any contractual arrangements to which the derivatives clearing organization is a party.

(c) *Computation of financial resources requirement.* (1) A derivatives clearing organization shall, on a monthly basis, perform stress testing that will allow it to make a reasonable calculation of the financial resources needed to meet the requirements of paragraph (a)(1). The derivatives clearing organization shall have reasonable discretion in determining the methodology used to compute such requirements, provided that the methodology must take into account both historical data and hypothetical scenarios. The Commission

may review the methodology and require changes as appropriate.

(2) A derivatives clearing organization shall, on a monthly basis, make a reasonable calculation of its projected operating costs over a 12-month period in order to determine the amount needed to meet the requirements of paragraph (a)(2) of this section. The derivatives clearing organization shall have reasonable discretion in determining the methodology used to compute such projected operating costs. The Commission may review the methodology and require changes as appropriate.

(d) *Valuation of financial resources.* (1) At appropriate intervals, but not less than monthly, a derivatives clearing organization shall compute the current market value of each financial resource used to meet its obligations under paragraph (a) of this section. Reductions in value to reflect market and credit risk (haircuts) shall be applied as appropriate and evaluated on a monthly basis.

(2) If assessments for additional guaranty fund contributions are permitted by the derivatives clearing organization's rules, in calculating the financial resources available to meet its obligations under paragraph (a)(1) of this section:

(i) The derivatives clearing organization shall have rules requiring that its clearing members have the ability to meet an assessment within the time frame of a normal variation settlement cycle;

(ii) The derivatives clearing organization shall monitor, on a continual basis, the financial and operational capacity of its clearing members to meet potential assessments;

(iii) The derivatives clearing organization shall apply a 30 percent haircut to the value of potential assessments, and

(iv) The derivatives clearing organization shall only count the value of assessments, after the haircut, to meet up to 20 percent of those obligations.

(e) *Liquidity of financial resources.* (1) The derivatives clearing organization shall effectively measure, monitor, and manage its liquidity risks, maintaining sufficient liquid resources such that it can, at a minimum, fulfill its cash obligations when due. The derivatives clearing organization shall hold assets in a manner where the risk of loss or of delay in its access to them is minimized. The financial resources allocated by the derivatives clearing organization to meet the requirements of paragraph (a)(1) of this section shall be sufficiently liquid to enable the derivatives clearing organization to fulfill its obligations as a central counterparty during a one-day settlement cycle. The derivatives clearing organization shall have sufficient capital in the form of cash to meet the average daily settlement variation pay per clearing member over the last fiscal quarter. If any portion of the remainder of the financial resources is not sufficiently liquid, the derivatives clearing organization may take into account a committed line of credit or similar facility for the purpose of meeting this requirement.

(2) The financial resources allocated by the derivatives clearing organization to meet the requirements of paragraph (a)(2) of this section must include unencumbered, liquid financial assets (*i.e.,* cash and/or highly liquid securities) equal to at least six months' operating costs. If any portion of such financial resources is not sufficiently liquid, the derivatives clearing organization may take into account a committed line of credit or similar facility for the purpose of meeting this requirement.

(3)(i) Assets in a guaranty fund shall have minimal credit, market, and liquidity risks and shall be readily accessible on a same-day basis;

(ii) Cash balances shall be invested or placed in safekeeping in a manner that bears little or no principal risk; and

(iii) Letters of credit shall not be a permissible asset for a guaranty fund.

(f) *Reporting requirements.* (1) Each fiscal quarter, or at any time upon Commission request, a derivatives clearing organization shall:

(i) Report to the Commission;

(A) The amount of financial resources necessary to meet the requirements of paragraph (a);

(B) The value of each financial resource available, computed in accordance with the requirements of paragraph (d); and

(C) How the derivatives clearing organization meets the liquidity requirements of paragraph (e);

(ii) Provide the Commission with a financial statement, including the balance sheet, income statement, and statement of cash flows, of the derivatives clearing organization or of its parent company; and

(iii) Report to the Commission the value of each individual clearing member's guaranty fund deposit, if the derivatives clearing organization reports having guaranty funds deposits as a financial resource available to satisfy the requirements of paragraph (a)(1) of this section.

(2) The calculations required by this paragraph shall be made as of the last business day of the derivatives clearing organization's fiscal quarter.

(3) The derivatives clearing organization shall provide the Commission with:

(i) Sufficient documentation explaining the methodology used to compute its financial resources requirements under paragraph (a) of this section,

(ii) Sufficient documentation explaining the basis for its determinations regarding the valuation and liquidity requirements set forth in paragraphs (d) and (e) of this section, and

(iii) Copies of any agreements establishing or amending a credit facility, insurance coverage, or other arrangement evidencing or otherwise supporting the derivatives clearing organization's conclusions.

(4) The report shall be filed not later than 17 business days after the end of the derivatives clearing organization's fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the derivatives clearing organization.

3. Add § 39.29 to read as follows:

§ 39.29 Financial resources requirements.

(a) *General rule.* Notwithstanding the requirements of § 39.11(a)(1) of this part, a systemically important derivatives clearing organization shall maintain financial resources sufficient to enable it to meet its financial obligations to its clearing members notwithstanding a default by the two clearing members creating the largest combined financial exposure for the systemically important derivatives clearing organization in extreme but plausible market conditions.

(b) *Valuation of financial resources.* Notwithstanding the requirements of § 39.11(d)(2) of this part, if assessments for additional guaranty fund contributions are permitted by the systemically important derivatives clearing organization's rules, in calculating the financial resources available to meet its obligations under paragraph (a) of this section:

(1) The systemically important derivatives clearing organization may not count the value of assessments to meet the obligations arising from a default by the clearing member creating the largest financial exposure for the systemically important derivatives clearing organization in extreme but plausible market conditions; and

(2) The systemically important derivatives clearing organization may only count the value of assessments, after the haircut set forth in § 39.11(d)(2)(iii) of this part, to meet up to 20 percent of the obligations arising from a default by the clearing member

creating the second largest financial exposure for the systemically important derivatives clearing organization in extreme but plausible market conditions.

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

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

Authority: 7 U.S.C. 2 and 12a.

5. In § 140.94, revise paragraphs (a)(4) and (a)(5) and add a new paragraph (a)(6) to read as follows:

§ 140.94 Delegation of authority to the Director of the Division of Clearing and Intermediary Oversight.

(a) * * *

(4) All functions reserved to the Commission in § 5.12 of this chapter, except for those relating to nonpublic treatment of reports set forth in § 5.12(i) of this chapter;

(5) All functions reserved to the Commission in § 5.14 of this chapter; and

(6) All functions reserved to the Commission in §§ 39.11(b)(1)(vi), (b)(2)(ii), (c)(1), (c)(2), (f)(1), and (f)(4) of this chapter.

* * * * *

Issued in Washington, DC, on October 1, 2010, by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–25322 Filed 10–13–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 2

RIN 2009–AN72

Release of Information From Department of Veterans Affairs Records

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its regulations governing the submission and processing of requests for information under the Freedom of Information Act (FOIA) in order to implement provisions of the E–FOIA Act and the Openness in Government Act, and to reorganize and clarify existing regulations. The proposed regulations would establish the procedures and rules necessary for VA to process requests for information under the FOIA, including matters such as how to file a request or appeal, how requests for business information are handled, and how issues regarding fees are resolved. The intended effect of these regulations is to implement legislative changes made to the FOIA, as noted above, and to provide the public clear instructions and useful information regarding the filing and processing of FOIA requests.

DATES: Comments must be received on or before December 13, 2010.

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 Avenue, NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN72, Release of Information from Department of Veterans Affairs Records." 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: Catherine Nachmann, Staff Attorney, Office of the General Counsel (024), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7684. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The FOIA, codified at 5 U.S.C. 552, requires an agency to publish public guidance regarding its implementation of the statute, such as rules of procedure and substantive rules of general applicability. The Privacy Act of 1974, as amended, codified at 5 U.S.C. 552a, requires an agency to publish its rules and procedures implementing that statute. Section 501(a) of title 38, U.S.C., authorizes the Secretary of Veterans Affairs to prescribe rules and regulations to carry out the laws administered by VA, including when information may be released from claimant records under 38 U.S.C. 5701, what activities fall within 38 U.S.C. 5705 regarding confidentiality of medical quality assurance records, whether and to whom information pertaining to those activities may be released, and when information may be released from records covered by 38 U.S.C. 7332 regarding the identity, diagnosis, or treatment of drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, and sickle cell anemia.

We propose to amend VA's regulations pertaining to release of information under 5 U.S.C. 552. VA's current FOIA regulations are codified at 38 CFR 1.550 through 1.557, including reserved §§ 1.558 and 1.559. This proposed rule would implement the FOIA in §§ 1.550 through 1.562. The proposed rule would in large part cover the same issues as are covered in VA's current regulations, such as how to submit a request for records, how VA addresses a request for records, and fees for addressing record requests under the FOIA. We propose to update these regulations to accommodate current means of communication with VA, streamline the existing procedures based on our experience administering the FOIA, incorporate changes in the procedural requirements of the FOIA since promulgation of current regulations, make VA's procedures easier for the public to understand, and generally reorganize and renumber the applicable provisions.

In addition, we propose to add new provisions to explicitly implement the E–FOIA Act, Public Law 104–231, and the Openness in Government Act, Public Law 110–175. For additional resources on any of the procedural requirements of the FOIA, E–FOIA Act, or Openness in Government Act in particular, see the detailed information available at the U.S. Department of Justice (DOJ) website. For example, a copy of the FOIA can be located at *http://www.justice.gov/oip/amended-foia-redlined.pdf.* The current edition of the VA FOIA Reference Guide can be located at *http://www.foia.va.gov/docs/RequesterHandbook.pdf,* and specific information about implementing the FOIA and its amendments can be found in guidance issued by DOJ through its FOIA Updates and FOIA Post publications, located at *http://www.usdoj.gov/oip/foi-upd.htm* and *http://www.justice.gov/oip/foiapost/mainpage.htm.*

Changes to 38 CFR Part 1

1.550 Purpose

Current § 1.550 is entitled "General" and provides a general statement of VA policy regarding disclosure of information to the extent permitted by law, including when VA would otherwise be authorized to withhold the information, if the disclosure is for a useful purpose or when disclosure will not affect the proper conduct of official

agency business or constitute an invasion of personal privacy. Current § 1.550 does not provide all of the general information that may be useful to the public regarding a request for VA records, including information necessitated by recent FOIA amendments and VA policy updates.

We propose to amend § 1.550 to generally provide more detail regarding VA's FOIA program. Proposed § 1.550(a) would encourage requesters to read the VA FOIA regulations in conjunction with the FOIA. Based on our experience administering the FOIA, we believe that FOIA requesters will benefit from a greater awareness of the context in which their requests are addressed. In keeping with the legal and policy considerations associated with the administration of the FOIA, proposed § 1.550(a) would authorize release of information on a discretionary basis and without regard to otherwise applicable restrictions in VA's FOIA regulations when current law and governmental policy permit such disclosures. Proposed § 1.550(b) through (e) would advise requesters that other regulations also apply to requests for particular types of records, such as Privacy Act records.

1.551 Definitions

With the exception of current § 1.554a, regarding pre-disclosure notification, and current § 1.555, regarding fees, VA's current FOIA regulations do not contain definitions. Accordingly, we propose to add a definitions section in which we would consolidate all applicable definitions. By providing more definitions of terms commonly used in the FOIA process, proposed § 1.551(a) would clarify the regulations, provide greater understanding for requesters, and assist in the implementation of VA's FOIA regulations. These definitions are proposed for clarification purposes only. No substantive effect is intended.

1.552 General Provisions

Proposed § 1.552(a) would create a section that would refer requesters to an Internet link through which they may obtain access to VA's information that is electronically available under the FOIA and information regarding VA's processing of FOIA requests.

Section 552(a)(6)(B)(ii), as amended by the Openness in Government Act, requires Federal agencies to make available a Public Liaison to assist in disputes arising between the agency and individual requesters. Proposed § 1.552(b) would identify VA's Public Liaisons and provide contact information.

Section 552(e)(1) through (3) requires agencies to prepare an Annual Report that provides details regarding the agency's administration of its FOIA program. Proposed § 1.552(c) would advise the public of this requirement and provide information concerning the procedures for obtaining a copy of VA's Annual Report.

1.553 Public Reading Rooms

Proposed § 1.553 would replace current § 1.552(a). Current § 1.552(a), in part, provides (1) that statements of policy and interpretations adopted by VA but not published in the **Federal Register**, and administrative staff manuals and staff instructions that affect any member of the public, unless promptly published and copies offered for sale, will be indexed by VA; (2) that such indexes will be published, quarterly or more frequently, and distributed or that VA will provide copies at a cost not to exceed the direct cost of duplication and both the index and the materials indexed will be made available to the public for inspection and copying; and (3) that public reading facilities will be maintained by VA Central Office and VA field facilities for this purpose.

Proposed § 1.553(a) would advise the public that VA maintains a public reading room electronically at its FOIA home page on the Internet, which contains records and a current subject matter index of reading room records (updated quarterly or more frequently) that the FOIA requires to be regularly made available for public inspection and copying. In so doing, proposed § 1.553(a) would implement section 552(a)(2) of the FOIA, as amended by the E–FOIA Act, which requires that for records created after November 1, 1996, agencies make such information available by electronic means. Proposed § 1.553(a) would also prescribe that each VA component is responsible for determining which of its records are required to be made available electronically. Proposed § 1.553(a) would generally update VA's FOIA program with regard to public access to records by advising the public of the electronic availability of records. The information provided in this provision would be a useful starting point for an individual seeking access to VA records.

Section 552(a)(2), requires agencies to make available certain documents for public inspection and copying. Current § 1.552(b) implements 552(a)(2), stating that when publishing or making available to the public any opinion, order, statement of policy, interpretation, staff manual or instruction to staff, identifying details will be deleted, and the deletion justified in writing, to the extent required to prevent a clearly unwarranted invasion of personal privacy. Similarly, proposed § 1.553(b) would prescribe that VA may delete some of the information that it is making publicly available, including, for example, when its release would result in an unwarranted invasion of an individual's privacy. In substance, proposed § 1.553(b) restates the provisions of current § 1.552(b).

Proposed § 1.553(c) would implement § 552(a)(2), which requires that the agency make public reading room material available for inspection and copying. It would provide that some VA components may maintain physical public reading rooms where individuals may obtain publicly available information. In part, current § 1.552(a) implements the same requirement, providing for the maintenance of public reading facilities. Proposed § 1.553(c), therefore, would replace that portion of current § 1.552(a) that implements this requirement. It would also provide that contact information regarding VA components having physical public reading rooms is available on VA's Internet home page. Proposed § 1.553(c) would facilitate an individual's access to a physical public reading room by providing easily accessible information regarding the availability of reading rooms within VA, thereby facilitating an individual's access to reading room material.

1.554 Requirements for Making Requests

Proposed § 1.554 would replace current § 1.553. Current § 1.553(a) prescribes that except for records made publicly available, requests for records will be processed under current § 1.553(b) (discussed below) and any other law applicable to the confidentiality of information. Current § 1.553(a) also provides that VA will consider making records available that it is permitted to withhold under the FOIA if it determines that such disclosure could be in the public interest.

Current § 1.553(b) prescribes the requirements for submitting a FOIA request, including that the request must be in writing over the signature of the requester, that it must contain a reasonable description of the record sought so that it may be located with relative ease, and that it should be made to the office having jurisdiction of the record desired. Proposed §§ 1.554(a) and 1.554(b) would replace current § 1.553(a) and (b) and clarify the procedure for submission of requests for

records under the FOIA. The proposed provisions would prescribe that VA will accept a facsimile (fax) or electronic mail (e-mail) FOIA request if it contains an image of the requester's handwritten signature. These amendments are necessary to clearly identify the acceptable methods of submitting requests and expand the methods by which requests may be made. They would also provide more flexibility for individuals in submitting a FOIA request to VA and would authorize requests in keeping with updated technology. Proposed § 1.554(a) also would clarify other administrative details with respect to making a FOIA request, such as referring the requester to VA's list of FOIA contacts, advising the requester to direct the request to the proper office, and referring the requester to VA's FOIA Reference Guide.

As a general rule, a record covered by the Privacy Act, 5 U.S.C. 552a, will only be released at the request of, or with the prior authorization by, the subject of the record. Proposed § 1.554(c) would add a provision advising requesters that if they wish to receive information about another individual, the requester should provide proof of his or her authorization to receive that information to cover instances where, after weighing personal privacy interest against the public interest under 5 U.S.C. 552(b)(6), FOIA does not require disclosure. Based on our experience in administering the FOIA, we believe that by providing more detailed information regarding the submission of FOIA requests and making such information available electronically, proposed § 1.554(a) through (c) would facilitate the submission of FOIA requests and would expedite the FOIA process, including by directing the request to the proper address.

Section 552(a)(3)(A) provides that upon a request for records that "reasonably describes" the records and is made in accordance with the agency's rules and procedures, the agency shall make such records available. Proposed § 1.554(d)(1) would clarify VA's implementation of the requirement that the request reasonably describe the records sought. Specifically, proposed § 1.554(d)(1) would expand current § 1.553(b) by requiring that requesters provide, to the extent possible, sufficient detail in requests to allow VA to formulate a response. It would also advise requesters that requests that lack specificity may not be considered "reasonably described." Based on our experience in administering the FOIA, we believe these proposed amendments will make the FOIA process more efficient in that it would clarify for requesters the required level of detail for their requests, thereby allowing VA personnel to locate any responsive records more easily. The amendments would generally clarify the request process.

Proposed § 1.554(d)(2) would advise the requester that requests for voluminous amounts of records may be considered "complex" or may meet the criteria for "unusual circumstances" as set forth in proposed § 1.556; both concepts are discussed in detail below regarding proposed § 1.556.

Proposed § 1.554(d)(3) would expand current § 1.553(b) by prescribing an opportunity for requesters to modify their requests if they do not reasonably describe the records or otherwise do not meet the regulatory requirements for requests. Proposed § 1.554(d)(3) would allow VA to address a request even if the request does not initially meet regulatory requirements. Based on VA's experience, handling any insufficiencies or ambiguities in the request at the outset would avoid delay in addressing the request and provide the requester an avenue for early resolution of the request.

Under section 552(a)(3)(A), a FOIA request must reasonably describe the record sought. Upon receipt, VA must respond to the request, ordinarily, within 20 days (excepting Saturdays, Sundays, and Federal legal public holidays). Proposed § 1.554(d)(4) would prescribe that the time limit for addressing a FOIA request does not begin to run until VA determines that the requester has reasonably described the records and that, if clarification is sought and not received within ten business days, VA will close its file on the request. In our experience, the enforcement of this provision would assist in VA's administration of the FOIA by clarifying VA's process and providing a firm deadline by which an individual must respond to a request for clarifying information. In so doing, VA would place responsibility on the requester to follow request procedures, as required by section 552(a)(3)(A), and promptly reply to VA requests for clarifying information. VA cannot process a request that does not reasonably describe the records. Attempts to address such a request would be futile and may delay action on other requests that meet the requirements. It is imperative, therefore, that the requester reasonably describes the record that is the subject of the request.

Section 552(a)(4)(A) sets forth the requirements regarding the payment of fees for processing record requests. Proposed § 1.554(e) would provide preliminary information regarding the payment of fees (fees are discussed in more detail in proposed § 1.561). It is included at an introductory level to notify requesters of the general fee guidelines. Proposed § 1.554(e) would restate current § 1.555(b)(2) regarding notification of an anticipated fee in excess of $25.00 or the amount that the requester has indicated a willingness to pay. It would also restate current § 1.555(g)(4)(i) and (ii) regarding advance payment where the estimated fee is $250.00 or higher or the requester has previously failed to pay a fee in a timely manner.

Proposed § 1.554(e) would also implement section 552(a)(6)(A)(ii), as amended by the Openness in Government Act, which authorizes an agency to toll the response due date if it is awaiting information from the requester or if clarification is being sought regarding fee issues. Proposed § 1.554(e) would prescribe tolling of the time limit for responding to a FOIA request if necessary to clarify issues regarding a fee assessment. It would also amend the provisions in current § 1.555 by advising requesters that the responding VA component has authority to require written assurance that the fee will be paid, and that if the component's FOIA Officer does not receive a response either to a request for more information or, under certain circumstances, a request for an advance payment, he or she may close the file. Further, proposed § 1.554(e) would advise requesters that even if they are seeking a fee waiver, they may indicate a willingness to pay a fee up to a certain amount. These amendments are necessary to clarify VA policy regarding the assessment of FOIA processing fees and how fee issues may affect the processing of an individual's request. Based on our experience, we believe that setting out the parameters of the FOIA process, including with respect to fees, will encourage resolution of administrative issues early in the processing of a request, thus streamlining the process and avoiding unnecessary delay.

Proposed § 1.554(f) would prescribe that a request must meet the requirements of proposed § 1.554 in order to be considered a perfected request. We propose this amendment to ensure that FOIA requesters understand that VA requirements must be met before the Department devotes resources to processing any request.

1.555 Responsibility for Responding to Requests

Proposed § 1.555 would replace current § 1.553a. Proposed § 1.555(a)

would provide at the outset that the component's FOIA Officer may process the request or refer it to the appropriate VA office, that office will provide the FOIA Officer with all documents in their possession, and that the search cut-off date generally is the date that the search begins, i.e., no documents created after that date will be considered responsive to the FOIA request. If another date is used, the requester will be advised. In our experience, this amendment is necessary to clarify the processing of requests within the agency. This amendment, for example, would resolve questions about the FOIA Officer's authority to access records potentially responsive to a FOIA request and would establish a cut-off date for searches. Removing any ambiguity that exists with regard to the application of the FOIA or VA's processing of FOIA requests would allow the system to operate more effectively and efficiently.

Proposed § 1.555(b) would replace current § 1.553a(a) and provide that the individual in each component who will be responsible for granting or denying a request is the "FOIA Officer" rather than the "proper employee designated." This amendment would clarify that the individual responsible for addressing FOIA requests is the FOIA Officer and is intended to encourage consistency throughout the agency in handling FOIA requests.

Proposed § 1.555(c) and (d) would replace current § 1.553a and prescribe that the FOIA Officer will transfer to, or consult with, another component or agency regarding, a request, including a request that involves classified information, when another component or agency is better able to address the request. Proposed § 1.555(e) would provide that the FOIA Officer will notify the requester when all or part of the request has been referred to another component or agency. We propose this amendment to provide as much information as possible to requesters about the processing of their requests. Informing requesters of the administrative actions that may occur with respect to their requests will assist in the effective administration of the FOIA program.

1.556 Timing of Responses to Requests

Proposed § 1.556 would replace current provisions and add provisions regarding the treatment of FOIA requests. Proposed § 1.556(a) would add a provision stating generally that VA components will respond to FOIA requests according to their order of receipt.

Proposed § 1.556(b)(1) would prescribe VA's use of a multitrack processing system in which, once received, FOIA requests are placed in one of two tracks based upon the work and time required to process the request. Proposed § 1.556(b)(2) would require VA processors to advise requesters of the track to which their request is assigned (simple or complex). Under the proposed rule, VA would provide the requester the opportunity to discuss his or her request with the processing VA component in order to qualify for the faster processing track. These proposed provisions implement sections 552(a)(6)(D)(i) and (ii), which authorize agency rulemaking regarding multitrack processing of records requests and the opportunity to qualify for the faster track. Multitrack processing would enable VA to organize its FOIA request intake in such a way as to provide a greater understanding of the nature and extent of the work required to address various requests. In addition, it would allow personnel to organize their workload in accordance with varying degrees of complexity of the requests presented. Lastly, it would allow requesters to modify their requests to enable VA to address the request more expeditiously. In our experience, requesters often frame requests in a way that would include more material than may be necessary to answer their inquiry. Allowing requesters to work with VA to clarify a request before the agency expends resources on gathering documents that the requester does not want would allow a quicker resolution for the requester and would allow the agency to allocate resources to other requests.

Proposed § 1.556(c) would amend current § 1.553a(d) in that it would set forth the circumstances under which VA may determine that unusual circumstances exist with regard to addressing a FOIA request. The definition of "unusual circumstances" is prescribed at 5 U.S.C. 552(a)(6)(B), and includes, for example, the need to collect records from a facility other than the office processing the request. Proposed § 1.556(c) would add a provision that if VA requires an extension of more than 10 business days to address the request, the requester may modify the request so that it may be processed within applicable time limits or arrange an alternative time period with the VA component that is processing the request. Similar to proposed § 1.556(b)(2), proposed § 1.556(c) would prescribe consultation with the requester to allow for modification of the request or arrange an alternative time period within which VA must process the request. This provision encourages early clarification of the request and should promote expeditious processing. Our experience is that communication with the requester in cases such as this is beneficial to all parties, as it clarifies issues for the agency and notifies the requester that the agency is interested in processing the request as expeditiously as possible.

Proposed § 1.556(c)(1)(i) through (iii) would replace current § 1.553a(d)(1) through (3) and incorporate statutory requirements in section 552(a)(6)(B)(i) through (iv) regarding the meaning of "unusual circumstances."

Proposed § 1.556(c)(2) would authorize the aggregation of requests if VA determines that certain requests are from the same requester, or a group of requesters acting in concert, actually constitute the same request and that as such, the requests would otherwise meet the requirements for "unusual circumstances," as defined in section 552(a)(6)(B)(iii). This provision would allow VA to address the substance of a request rather than the form of the request; in other words, when a request, in substance, meets the unusual circumstances requirements, the agency would address it as such. The proposed revision in this regard would result in a more equitable distribution of FOIA requests and request workload as it would allow the agency to consider the nature of the request in determining how to characterize it.

Section 552(a)(6)(E)(i) through (vi) requires VA rulemaking regarding the procedures for expedited processing of requests. We propose to implement these procedures in § 1.556(d). Proposed § 1.556(d)(1) would prescribe the circumstances that represent a "compelling need" for the information, a requirement that must be met in order to meet the requirement for expedited review under the FOIA. Proposed § 1.556(d)(2) restates section 552(a)(6)(E)(vi), which provides that a requester seeking expedited processing must submit a certified statement to the processing agency regarding the request for expedited review. Proposed § 1.556(d)(3) restates section 552(a)(6)(E)(ii), which requires agencies to make a determination regarding a request for expedited processing within 10 days of the receipt of the request.

1.557 Responses to Requests

Proposed § 1.557(a) would require the processing VA component to acknowledge receipt of the request and assign a docket number to the request. This provision is intended as an

administrative tool that components would use to organize incoming requests and to provide the requester with pertinent information should he or she wish to contact VA for information.

Proposed § 1.557(b) would implement the provisions of section 552(a)(3)(B) through (C) to the extent that the proposed rule would require a component properly in receipt of a request to conduct a reasonable search for records, including records in electronic form or format, and to provide those records in the form or format requested by the individual, if readily reproducible in that form or format. In this regard, proposed § 1.557(b) would essentially restate the FOIA provisions. In addition, proposed § 1.557(b) would clarify that any responsive records would be those in the component's possession and control as of the date the search for responsive records begins and would provide for notification to the requester if a fee is due under proposed § 1.561. Adding this interpretation of the search date and initial fee assessment requirements would eliminate any ambiguity with regard to the time frame of the search and any resulting fee.

Proposed § 1.557(b) also would implement section 552(b), which requires deletion of certain exempt portions of records and identification of the FOIA exemption under which the deletion is made. This proposed revision would also restate, in part, current § 1.554(a), which prescribes that records will be provided after deletion of material exempt under the FOIA, as discussed in current § 1.554(a).

Proposed § 1.557(c) would restate section 552(a)(6)(A) and replace current § 1.553a(b). The proposed rule would prescribe a 20-day deadline in which a VA component will act upon a request and a 10-day limit for referring a request to another component.

Proposed § 1.557(d) would implement section 552(a)(6)(F), which requires agencies to provide requesters a statement regarding the amount of information withheld and the FOIA exemption under which information is withheld, unless providing such a statement would harm an interest protected by the applicable exemption, and would replace current § 1.557(a). The proposed rule would provide specific examples of the types of determinations that are adverse to requesters, restate the requirement to include the name of the individual responsible for the denial, and prescribe a statement of the reasons for the denial and notice regarding the right to appeal under proposed § 1.559. Placing the information that will be included in an adverse determination in one provision will clarify the FOIA process and benefit all parties involved. Our intent in proposing this provision is to provide VA components clear and consistent direction regarding the requirements for adverse determinations and to ensure that requesters receive notice concerning the reasons for the determination and their appeal options.

1.558 Business Information

Section 552(b)(4) exempts from release matters that are trade secrets and commercial or financial information obtained from a person that is privileged and confidential. Executive Order 12,600 establishes the procedures to be followed when the agency believes that responsive records include such information. Ordinarily, these provisions apply when a request is received for information submitted by an individual doing business with VA who has provided to VA its business information, or information that he or she considers commercial or confidential; this individual is referred to as the "submitter" of the information. The "submitter" typically designates the information as protected, as discussed further below.

Proposed § 1.558 would replace current § 1.554a in addressing the issues raised by business information; it would replace the term "confidential commercial" information used in current § 1.554a with "business" information. This revision would provide individuals specific information at the outset concerning whether their request would involve such information. Proposed § 1.558(a) would replace current § 1.554a(a) and provide an introductory statement regarding the consideration of business information pursuant to proposed § 1.558. Proposed § 1.558(b) essentially would replace current § 1.554a(d), which outlines the requirements for a submitter to designate records as business information. Proposed § 1.558(b) varies from current § 1.554a(d) in that it would allow for the business information designation to take place within a reasonable time after submission of the information to VA. Current § 1.554a(d) contains the same language but qualifies the "reasonable time" as not later than 60 days after receipt of the information by VA. In addition, proposed § 1.558(b) would add a provision stating that the designation will be considered by the VA component processing the request, but will not control the FOIA Officer's determination. Based on VA's experience in administering current FOIA provisions, VA believes that these revisions would allow flexibility with regard to the submitter's designation and would clarify the role of the designation for the submitter, i.e., the submitter should understand at the outset that while records may be designated as business information, the designation itself does not necessarily determine the outcome of the VA component's decision, which will be made in compliance with applicable laws.

Proposed § 1.558(c)(1) would replace current § 1.554a(c) and prescribe the requirements for notice to a submitter of business information whenever a request for that information is being processed under the FOIA. Proposed § 1.558(c)(1) would differ from current § 1.554a(c) by requiring the submitter to provide objections to the disclosure within the "time period specified" in the notice, as opposed to within 10 working days, as prescribed in current § 1.554a(c). This revision is repeated in proposed § 1.558(d). This revision would allow VA the flexibility to meet statutory time limits and/or change the number of days in which a response is required as a policy matter without requiring a change in its regulations. Proposed § 1.558(c)(1) also would delete the current requirement for the notice to be mailed by certified mail, return receipt requested. Our experience is that certified mail may unnecessarily delay the notification process when there are other suitable alternatives. Proposed § 1.558(c)(1) would add a provision allowing the FOIA Officer to post the notification in a place reasonably likely to accomplish the required notice when the notice concerns a large number of submitters. This proposed provision would allow the FOIA Officer greater flexibility and expedite notice by allowing electronic or other public notification of multiple submitters simultaneously.

Proposed § 1.558(d) would replace current § 1.554a(f) and eliminate "or designee" when referring to the submitter. We intend that this change will bring VA's FOIA regulations into compliance with Executive Order 12600, which established Federal policy regarding agency communication only with the submitter of information.

Proposed § 1.558(d) would require that the submitter's objections be contained in a single written response and that oral or multiple subsequent written responses ordinarily would not be considered. Based on our experience administering the FOIA with regard to business information, we believe that this revision would create a more efficient process by requiring a cohesive statement from the submitter rather than allowing continued or successive

submissions. Additionally, eliminating oral responses would better develop the administrative record for all parties.

Proposed § 1.558(d) would also provide that if the submitter does not respond to VA's notification within the specified time limit, the submitter will be considered to have no objection to the disclosure. This provision would impose a duty to respond within the time limit in order to ensure that the submitter's objections, if any, can be properly considered in an efficient and timely manner. This proposed provision would also eliminate the requirement that the submitter provide objections within 10 days after receipt by the submitter of notification of a request for the submitter's information. Instead, the proposed rule would allow the FOIA Officer to set forth a "specified time limit" within which to respond.

Proposed § 1.558(d) would eliminate the language in current § 1.554a(f), which prescribes that information provided by the submitter would itself be subject to the FOIA. Our experience is that the existing notice in current § 1.554a(f) has a chilling effect on submitters detailing their objections to disclosure and discussing the likelihood of disclosure causing substantial competitive harms. Additionally, any submission of information to the government may be subject to the FOIA, thus making that language superfluous.

Proposed § 1.558(e) would replace current § 1.554a(f)(3) regarding the FOIA Officer's consideration of the submitter's objections in making a determination whether to release information. While current § 1.554a(f)(3), for example, states that VA will consider a submitter's comments if received within a 10-day time limit, proposed § 1.558(e) states that information provided by the submitter after the "specified time limit" will not be considered. While a specific time frame is not expressly stated in the proposed regulation, the regulation does provide for consideration of comments within a time frame specified by the FOIA Officer.

Proposed § 1.558(e) also would replace current § 1.554a(f)(3) with regard to the information contained in the written notice to the submitter. The proposed regulation makes no substantive changes to this provision.

Proposed § 1.558(f) would replace current § 1.554a(i)(1) through (3), identifying when the pre-disclosure notification requirements need not be followed. It would add to the provisions in current § 1.554a(i)(3) that pre-disclosure notification is not required if the disclosure is required by regulation issued in accordance with Executive Order 12600 or any other Executive Order. In this regard, the proposed rule would ensure that Executive Orders are included, as appropriate, as a basis for the disclosure of information. Proposed § 1.558(f) would delete references to current § 1.554a(i)(4) through (6) because VA's experience is that these provisions have not been utilized, and the revised provisions would, if necessary, cover the instances referred to in the referenced sections.

Proposed § 1.558(g) would replace current § 1.554a(g)(1) and would make no change to that provision. Current § 1.554a(g)(2) regarding notice to a requester when a submitter is given an opportunity to provide comments about the disclosure would be deleted because under the proposed rule requesters would be on notice regarding VA's contacts with submitters. Proposed § 1.558(g) would prescribe notice to a requester that the request is being processed under § 1.558, including the provisions in § 1.558(c) and (e) prescribing notice to submitters regarding opportunity to comment. Current § 1.554a(g)(3) regarding notice to a submitter and requester of a final decision on disclosure of business information would also be deleted as unnecessary. Submitters would instead be given notice of an impending agency decision on disclosure of business information under proposed § 1.558(e). The requester would be notified when a final agency decision is issued pursuant to proposed § 1.557.

1.559 Appeals

Section 552(a)(6)(A) provides that when an agency component responds to an initial request for records, it shall provide the requester with the right to appeal any adverse determination to the head of the agency.

Proposed § 1.559 would replace current § 1.557(b). Current § 1.557(b) states only that the final agency decisions in appeals will be made by the VA General Counsel or Deputy General Counsel. Proposed § 1.559(a) would allow for an informal resolution of the request prior to an appeal in appropriate cases. We believe that in appropriate cases, requesters may benefit from contact with the FOIA Officer or VA component addressing the request and an attempt to resolve outstanding issues with regard to the request. The requester may seek informal resolution, for example, when he or she has not received a response to the request. Direct communication between the FOIA Officer and the requester could resolve the issue and therefore make an appeal unnecessary.

Proposed § 1.559(b) would establish authority for the VA Office of Inspector General (OIG) to handle appeals related to OIG records. This would allow the OIG to establish its independence regarding its own records.

Proposed § 1.559(b) through (c) would provide details regarding how to file an appeal and the form that an appeal may take and a reference to additional information available online.

Proposed § 1.559(d) would establish a 60-day time limit from the date of any adverse determination concerning the FOIA request for the requester to file an appeal. Current regulations do not address the timeliness of an appeal. Based upon our experience, we believe that prescribing a period within which an appeal may be filed provides an effective tool for establishing workload and allocating resources. We have determined that a 60-day time limit would be reasonable given the convenient means by which an individual may quickly file an appeal. We note that the proposed 60-day appeal period would be the same as the appeal period established by the Department of Justice for its FOIA appeals. We also believe that the requester should have the responsibility to follow through with the appeal if he or she wishes the request to be addressed and that the 60-day appeal period would provide ample time to exercise that responsibility. Further, the appeal process would be more seamless and effective if requesters included necessary information in their appeal notices, such as the information listed in proposed § 1.559(d). Based on our experience, we believe that encouraging requesters to initially provide as much information as possible would ease the administrative burdens of gathering relevant information and processing the appeal. Proposed § 1.559(d) would also provide that an appeal is not perfected until either the information requested is received or VA determines that the appeal is otherwise sufficiently defined. In our experience, appeals occasionally are so lacking in detail that it requires an excessive amount of time to identify the issues or records involved. Requesters would provide more clarity and therefore would require less labor-intensive inquiries by VA if they initially provided the information that is necessary to process the appeal. Proposed § 1.559(d) would also delegate authority to decide appeals to the VA Assistant General Counsel who has jurisdiction over FOIA matters. This amendment would add the Assistant General Counsel that has jurisdiction over records disclosure matters to the list of individuals authorized to make

such final agency determinations thus streamlining the appeal process while continuing to provide the thorough legal analyses currently afforded FOIA appeals.

Proposed § 1.559(e) would prescribe the content of a decision on appeal. Prescribing these requirements would facilitate consistency in decision-making and fully inform requesters regarding their right to a complete appellate decision from the agency.

Proposed § 1.559(f) would require a requester to file an appeal prior to seeking court review. This provision would provide the opportunity for resolution of the requester's concerns prior to initiating litigation and ensure that the matter is ready for judicial review.

1.560 Maintenance and Preservation of Records

The Federal Records Act, 44 U.S.C. chapter 31, addresses record preservation and destruction by Federal agencies. Section 3102 of title 44, U.S.C., requires that the head of an agency establish and maintain a records management system.

Proposed § 1.560(a) would require that VA components maintain FOIA requests and copies of pertinent records in accordance with NARA's General Records Schedule.

Proposed § 1.560(b) would require that the FOIA Officer maintain copies of records that are the subject of a pending request, appeal, or lawsuit under the FOIA. It would also prescribe that a copy of the records shall be provided to the Office of the General Counsel upon request.

These provisions would underscore the importance of maintaining records as appropriate and prescribe consistent compliance within VA. They would emphasize that administrative record-keeping is an important function in the FOIA program and that in order for VA components to build an administrative record, if required, information must be preserved as appropriate.

1.561 Fees

In accordance with section 552(a)(4)(A), an agency is required to promulgate regulations specifying the schedule of fees applicable to processing requests under the FOIA and establishing procedures and guidelines for determining when fees will be waived or reduced. In addition, agencies must implement the 1987 Fee Schedule and Guidelines published by the Office of Management and Budget (OMB). See The Freedom of Information Reform Act of 1986; Uniform FOIA Fee Schedule and Guidelines, 52 FR 59 (27 March 1987).

Proposed § 1.561 replaces current § 1.555. In part, proposed § 1.561(a) would replace current § 1.555(b)(1) in providing a general introduction and rules regarding fees. Proposed § 1.561(a) would add that the VA component would collect prescribed fees before releasing copies of the information to the requester and would include a provision regarding payment of fees. Lastly, proposed § 1.561(a) would direct a requester's attention to other VA statutes that contain provisions related to access to records and the fees for such access. These amendments would provide introductory comments regarding VA's fee provisions and are intended to clarify and highlight VA's general framework for the assessment of fees.

Proposed § 1.561(b) would replace current § 1.555(a) and would contain the definitions of terms used regarding FOIA fees. Proposed § 1.561(b)(1) would restate that portion of current § 1.555(d)(4) that defines "all other requesters" as any requester that does not fit within any other category; the proposed inclusion of this definition in this section would ensure that all pertinent definitions are included.

Proposed § 1.561(b)(2) would replace current § 1.555(a)(1) and would restate the definition of "commercial use request." The proposed regulation would make no substantive change to current § 1.555(a)(1).

Proposed § 1.561(b)(3) would replace current § 1.555(a)(2) and would restate the definition of "direct costs." The proposed regulation would make no substantive change to current § 1.555(a)(2).

Proposed § 1.561(b)(4) would replace current § 1.555(a)(3) and would restate the definition of "duplication." The proposed regulation would make no substantive change to current § 1.555(a)(3).

Proposed § 1.561(b)(5) would replace current § 1.555(a)(4) and would restate the definition of "educational institution." The proposed regulation would make no substantive change to current § 1.555(a)(4).

Proposed § 1.561(b)(6) would replace current § 1.555(a)(5) and in large part, restate the definition of "non-commercial scientific institution." The proposed regulation would make no substantive change to the provisions of current § 1.555(a)(5) with the exception of the addition that the requester must show that the request is authorized by and made under the auspices of a qualifying institution. This amendment would clarify the requirement for submitting such a request and would place responsibility on the requester to establish that it fits within this fee category. Our experience indicates that this requirement will assist in resolving the status of a fee requester at the outset and will clarify the requirements for such requesters.

Proposed § 1.561(b)(7) would replace current § 1.555(a)(6). It would restate current § 1.555(a)(6), but also implement the change in the definition of *news media* in section 552(a)(4)(A)(ii), which defines "representative of the news media" as described immediately below. The proposed rule would prescribe that a member of the news media is one who gathers information of potential interest to the public, uses his or her editorial skills to turn the raw material into a distinct work, and distributes that work to an audience. We propose to add language that alternative media sources may be considered news media if they otherwise meet the definition of news media. We believe this proposed language would underscore that the entity seeking classification as a news media must also meet the other criteria set forth in the definition of news media. Proposed § 1.561(b)(7) would also delete a reference to freelance journalists' option to seek a reduction or waiver of fees. We believe placing the reference here would be superfluous, as waiver or fee reduction is discussed in the introductory paragraph of proposed § 1.561(b)(7). In accordance with section 552(a)(4)(A)(ii), proposed § 1.561(b)(7) would add language that a representative of the news media must not be seeking records for a commercial use.

Proposed § 1.561(b)(8) would replace current § 1.555(a)(7). The proposed rule would essentially restate current § 1.555(a)(7) and would add examples of the types of records that are subject to review in a FOIA request. We believe that providing examples would provide more clarity for requesters concerning the potential assessment of fees.

Proposed § 1.561(b)(9) would replace the definition of *search* in current § 1.555(a)(8). The proposed rule would make no substantive change to current § 1.555(a)(8) with the exception of the deletion of the last sentence in current § 1.555(a)(8) regarding excluding review time. We believe that this language is unnecessary, as we have previously defined the term *search* in the context of the FOIA.

Proposed § 1.561(c) would replace current § 1.555(d) regarding categories of requesters and fees charged each category. The introductory language of proposed § 1.561(c) and (c)(1) (commercial use requesters) restates the

introductory language of current § 1.555(d) and(d)(1) (commercial use requesters), with the exception of adding language noting that the provisions apply unless a waiver or reduction of fees applies. We believe these proposed additions would clarify application of the fee provisions by directing the requester's attention to the exceptions that apply to the assessment of fees. In addition, proposed § 1.561(c)(1) would delete language from current § 1.559(d)(1) that states that a requester must reasonably describe the record requested. We believe that this language is superfluous in light of the full discussion of reasonably described records in proposed § 1.554(d).

Proposed § 1.561(c)(2) and (3) would replace current § 1.555(d)(2) and (3), respectively. Proposed § 1.561(c)(2) and (3) would refer the requester to the potential waiver or reduction of fees and would reiterate the charges assessed to an educational institution and a representative of the news media. It would delete language in current § 1.559(d)(2) and (3) regarding the requirements that must be met to be categorized as an educational and non-commercial scientific institution or a representative of the news media. The criteria for classification of these types of requesters would be clearly set forth in the definitions section.

Proposed § 1.561(c)(4) would replace current § 1.555(d)(4). Proposed § 1.561(c)(4) essentially restates the provisions of current § 1.555(d)(4) as to the charges that are assessed for an all other requester and its reference to the waiver or reduction of fees. Proposed § 1.561(c)(4) would delete language from current § 1.555(d)(4) that refers to requests for records retrievable by personal identifiers and the treatment of such requests. In doing so, the proposed rule would more clearly distinguish between requests made under the FOIA and requests made under other authority. Based on our experience, we believe that such distinctions are helpful in that requesters can determine which procedures are applicable to their requests and will be able to more clearly identify the action that is required. In addition, proposed § 1.550 provides information concerning the various disclosure statutes and the distinctions between those statutes. Including that information here would be superfluous.

Proposed § 1.561(d) would clarify the types of fees that VA may charge for processing requests. The introductory paragraph in proposed § 1.561 would provide a general statement notifying requesters that the fees to be charged are defined in proposed § 1.561. Proposed § 1.561(d)(1)(i) would clarify how a search fee is assessed and would advise that fees are charged in quarter hour increments. This provision would better advise requesters concerning the potential for a fee assessment and how VA will assess the fee. This information may also be helpful to requesters seeking to identify more precisely the records that are the subject of their request.

Proposed § 1.561(d)(1)(ii), in part, would replace current § 1.555(c)(2). It would reiterate how fees are assessed in cases requiring a computer search and make no substantive change in that regard. As an administrative matter, it would add a reference to the proposed-rule provisions that discuss when a fee would not be charged and when 2 hours of free search time would be granted.

Proposed § 1.561(d)(2) and (3) would add provisions clarifying when duplication and review fees, respectively, apply, and how such fees are calculated. These provisions would provide VA and requesters clear rules for determining the level of fees that may be assessed, depending upon the request submitted. Proposed § 1.561(d)(3), for example, would prescribe in detail when a fee may be charged for consideration of an exemption and when it may not. We believe that this type of detail would be useful to requesters as a means of explaining why certain charges are made or not made and accordingly, would potentially assist in VA's administration of the FOIA.

Proposed § 1.561(e)(1) and (2) would implement administrative provisions regarding the assessment of fees. In accordance with proposed § 1.561(e)(2), for example, more than half of a quarter-hour period must be spent on search and review for the requester to be charged for that quarter-hour. This proposed provision represents VA's determination that it is administratively worthwhile only to collect a fee representing more than one half of a quarter-hour increment.

Proposed § 1.561(e)(3) would implement section 552(a)(4)(A)(viii) by prescribing that certain fees may not be charged to various types of requesters if the agency fails to meet the time limits set forth in agency regulations. The proposed provision clarifies that duplication fees may still be charged to commercial use requesters and "all other" requesters.

Proposed § 1.561(e)(4), in part, would replace current § 1.555(c) and prescribe that the agency will provide the first 100 one-sided pages and the first 2 hours of search time without charge. We do not intend any substantive change to this provision.

Proposed § 1.561(e)(5), in part, would replace current § 1.555(c), which provides that no fee will be charged if the cost of collecting the fee is equal to or greater than the fee itself. Proposed § 1.561(e)(5) would clarify that if the total fee calculated is less than $25.00, no fee will be charged. Prescribing a dollar amount in this provision should clarify the regulation for requesters and remove any ambiguity that may exist in current regulations regarding permissible fees.

Proposed § 1.561(e)(6) would prescribe that VA may provide free copies of records or free services in response to requests from other government agencies or congressional offices when to do so would assist in providing medical care to a patient or to further VA's mission. This provision would allow the agency the flexibility to respond to certain requests promptly without addressing issues that may arise with regard to fees.

Proposed § 1.561(f) would add a chart that contains the categories of fee requesters and a summary of the types of fees that VA may charge. Proposed § 1.561(f) would provide a convenient administrative tool for VA officials and requesters, which would summarize information previously set forth in the proposed regulations and would not make any substantive changes.

Proposed § 1.561(g) would replace current § 1.555(e). Current § 1.555(e) consists of a schedule of fees in chart form. Proposed § 1.561(g) would add an introductory paragraph regarding the assessment of fees and would restate generally when the payment of fees is required. The proposed provision, for example, notes that VA would charge for special services used in responding to a FOIA request, that the fee schedule applies to requests under the Privacy Act as well, and that in cases in which the processing fee is less than $25.00, or in cases in which the requirements for a waiver have been met, the fee would be waived.

Section 552(a)(4)(A)(i) requires agencies to promulgate regulations prescribing a schedule of fees applicable to processing FOIA requests. The fees must conform to OMB guidelines regarding a uniform schedule of fees for all agencies. Proposed § 1.561(g)(1) would implement the OMB guidance and prescribe the criteria that VA would use to calculate search and review fees when such fees are based upon VA employees' salaries.

Proposed § 1.561(g)(2) would also provide a fee schedule in chart form that describes the type of activity for which the fee is being assessed and the composition of the fee being assessed.

Proposed § 1.561(h), in part, would replace current § 1.555(b)(2) and would add that the requester will be notified of the assessment of a fee over $25.00 or the amount set by OMB fee guidelines, whichever is higher. This provision would allow VA flexibility with regard to notifying requesters of fee assessments should the limit be changed in the future. It would also advise requesters of the potential for such a change. Proposed § 1.561(h) would add that any agreement made by the requester to pay a fee on a later date shall be in writing. Based on our experience, we believe that this requirement would help to avoid any ambiguity with regard to fee issues. Proposed § 1.561(h) would also expand the language in current § 1.555(b)(2) and authorize the FOIA Officer's contact with the requester regarding clarification of fee issues. Proposed § 1.561(h) would provide that the timeline for responding to the request shall be tolled until the fee issue is resolved. This proposed provision would implement section 552(a)(6)(A)(ii)(II), which authorizes tolling of the time limit if necessary to clarify issues regarding fee assessment. Proposed § 1.561(h) would also provide that if VA does not receive a response regarding a request for clarification of the fee issue within 10 days, it will close the file on the records request. We believe that setting a clear limit on the response time will avoid delay that results when a requester's intentions are unclear. Such a limit will also prevent VA from having to maintain cases on its docket that the requester has no interest in pursuing. Thus, it would be reasonable to place responsibility on the requester to follow through with the request that he or she initiated if the records sought are still desired.

Section 552 authorizes recovery of direct costs of search, duplication, and review in certain cases. Proposed § 1.561(i) would add a provision that when the agency chooses to provide a special service sought by the requester, such as certifying records, the direct cost of that service will be charged to the requester. This provision would allow the agency the flexibility to work with the requester to grant special services of this nature if possible, but allows the agency to recoup the costs of those services. This proposed provision would be promulgated pursuant to 31 U.S.C. 9701, which permits agencies to prescribe regulations establishing a charge for things of value provided by the agency.

Proposed § 1.561(j) would restate the provisions of current § 1.555(g) in all pertinent respects with regard to charging interest on an unpaid bill. It also would replace current § 1.555(g)(5) regarding application of the Debt Collection Act of 1982 (Pub. L. 97–365). It would delete the requirement that the determination to charge interest will be made by a VA Central Office official or field facility head or designee. Based on our experience, we believe that this requirement does not make the process more efficient. By deleting the current delegation of authority provision, we intend to provide flexibility for other individuals to make the determination to charge interest but only according to the criteria prescribed in VA's regulations. The proposed rule would also delete references to VA procedures that ensure that a requester who has remitted payment is credited with the payment. We believe this provision to be superfluous, as any payment would ordinarily be credited as a matter of administrative regularity.

Proposed § 1.561(k) would restate the provisions of current § 1.555(g)(3) in all pertinent respects with regard to aggregating requests. Proposed § 1.561(k) would use the term "component" rather than "responsible Central Office official or field facility head or designee." Based on our experience, we believe that this requirement would allow more flexibility in determining whether a request should be aggregated according to the criteria in VA's regulations. It also would allow those most familiar with the FOIA process to make the determination, which we believe would add more administrative regularity to the process.

Proposed § 1.561(l)(1) would restate the introductory language set forth in current § 1.555(g)(4). Proposed § 1.561(l)(1) would add that payment for work already completed is not an advance payment. This language is an administrative provision intended to clarify what constitutes an advance payment.

Proposed § 1.561(l)(2) would restate the provisions of current § 1.555(g)(4)(i) in all pertinent respects with regard to advance payments. It would delete current provisions providing an option for the VA to notify the requester of the likely fee and obtain satisfactory assurance of full payment. Based on our experience, deleting this language would avoid any ambiguity with regard to the fee and would clarify that the component may require payment in advance. We believe this would assist in the administration of this provision.

Proposed § 1.561(l)(3) would generally restate the provisions in current § 1.555(g)(4)(ii). However, proposed § 1.561(l)(3) would delete the option that a requester may demonstrate that a fee owed has been paid in order to allow VA to process the request. In our experience, the circumstances under which fee issues arise do not concern a requester who has already paid the fee. Typically, unresolved fee issues occur in the context of a fee that has not been paid. In order to address the typical situations in this regard, we propose the deletion of the language above as unnecessary.

Proposed § 1.561(l)(4) would add a provision that if a requester has a history of prompt payment, the FOIA Officer may accept assurance of full payment from the requester rather than require an advance payment.

Proposed § 1.561(l)(5) would restate current § 1.555(g)(4)(iii) with no substantive change.

Proposed § 1.561(m) would replace and restate current § 1.555(b)(4). Proposed § 1.561(m) would make no substantive change to current § 1.555(b)(4).

Proposed § 1.561(n)(1) would add language regarding the waiver or reduction of fees in general. It would direct the requester's attention to the requirements for fee waiver requests, and would require that the requester submit adequate justification for the fee waiver request and advise that without adequate justification, the waiver request will be denied. Proposed § 1.561(n)(1) also would provide the opportunity for the FOIA Officer to request additional information from the requester regarding the fee waiver request and close the file on the records request if VA does not receive the requested information within 10 days. This provision would advise the requester that it is important to submit adequate justification for the fee waiver request, which would avoid delay and fee waiver denials based simply on lack of adequate data. It would also provide for consistency in the administrative decision-making process by establishing a firm deadline for the submission of additional support. These provisions essentially would create a more efficient fee waiver request process, which would benefit both VA in its administration of the FOIA and requesters seeking records. In addition, proposed § 1.561(n)(1) would prescribe that fee waiver requests are determined on a case-by-case basis. This provision would clarify that each request for a fee waiver will be analyzed in its own right. A requester's history of having received a fee waiver in the past would have no bearing on future requests. We believe that this provision will also provide for greater administrative consistency in addressing fee waiver requests.

Proposed § 1.561(n)(2) through (4) would replace and restate the provisions of current § 1.555(f)(2). No substantive changes would be made in the provisions regarding the requirements to receive a fee waiver. Proposed § 1.561(n)(2) through (4) would also add clarifying language to each criterion considered in a fee waiver determination. The proposed rule would expand the fee waiver information provided in VA's regulations and should be helpful to requesters seeking waivers.

Proposed § 1.561(n)(5) would add a provision that if some of the records being released in response to a request meet the criteria for a fee waiver, then the assessment of a fee would be waived with regard to that portion of the records. This provision is administrative in nature and would advise requesters that it is possible to be provided a partial fee waiver. We intend that this provision would provide requesters as much information as possible regarding the parameters of fee waivers.

Proposed § 1.561(n)(6) is an administrative provision that requires requesters to provide the information requested by VA and provides notice regarding the administrative factors that enter into a component's fee waiver determination. It underscores that the component has some degree of discretion to consider such factors with regard to fee waiver requests. We believe that this addition would provide requesters with a more comprehensive understanding of the fee waiver process.

Proposed § 1.561(n)(7) would replace and restate current § 1.555(f)(4) regarding appeals from adverse fee waiver determinations. Proposed § 1.561(n)(7) makes no substantive change to the provision.

Proposed § 1.561(n)(8) would add a provision that when considering a fee waiver request, VA may require proof of identity. This provision would provide flexibility for components addressing fee waiver requests by allowing them to ensure that the proper party is providing the necessary information. This is an administrative provision and is intended to provide components with the flexibility to exercise options such as verification of identity in appropriate cases.

1.562 Other Rights and Services

Proposed § 1.562 would add a provision to advise requesters that nothing in this section shall be construed to entitle an individual to information to which the individual would not be entitled under the FOIA. This provision is an administrative addition, intended to underscore that these regulations govern release of information under the FOIA and should be construed in that context only.

Changes to 38 CFR Part 2

2.6 Secretary's Delegations of Authority to Certain Officials (38 U.S.C. 512)

Proposed § 2.6(e)(10) would add the Assistant General Counsel that has jurisdiction over FOIA matters to the list of those individuals authorized to make final Departmental decisions on appeals under the FOIA, the Privacy Act, and 38 U.S.C. 5701, 5705, and 7332. This proposed amendment would allow for greater flexibility in addressing and processing appeals under the FOIA. At a time when requests and appeals filed under various confidentiality statutes are expanding, additional signature authority would enable VA to process more appeals and expedite the appeals process.

Paperwork Reduction Act

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

The Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies this proposed rule would 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 proposed rule generally pertains to requests for information submitted by individuals. Further, it would be extremely rare, if ever, that a request for information by a small entity would have a significant impact on the business of the small entity. Therefore, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analyses 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 proposed rule have been examined and it has been determined not to be a significant regulatory action under Executive Order 12866.

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 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance number for the program affected by this proposed rule.

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

38 CFR Part 1

Administrative practice and procedure, Archives and records, Cemeteries, Claims, Courts, Crime, Flags, Freedom of information, Government contracts, Government employees, Government property, Infants and children, Inventions and patents, Parking, Penalties, Privacy, Reporting and recordkeeping requirements, Seals and insignia, Security measures, Wages.

38 CFR Part 2

Authority delegations (Government agencies).

Dated: October 4, 2010.

Robert C. McFetridge,

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

For the reasons stated in the preamble, VA proposes to amend 38 CFR parts 1 and 2 as follows:

PART 1—GENERAL PROVISIONS

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

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

2. In Part 1, revise the undesignated center heading immediately preceding § 1.550 to read as follows:

Procedures for Disclosure of Records Under the Freedom of Information Act

2a. In Part 1, following the newly revised undesignated center heading remove the Note and authority citation preceding § 1.550.

3. Revise § 1.550 to read as follows:

§ 1.550 Purpose.

(a) Sections 1.550 through 1.562 contain the rules followed by VA in processing requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. These regulations should be read together with the FOIA, which provides the underlying legal basis for the regulations and other information regarding requests for records in the custody of a Federal agency. Information routinely provided to the public (press releases, for example) may be provided without following these sections. In addition, as a matter of policy, VA may make discretionary releases of records or information exempt from disclosure under the FOIA when permitted to do so in accordance with current law and governmental policy.

(b) Requests for records about an individual protected by the Privacy Act, 5 U.S.C. 552a, including one's own records and records that pertain to an individual and that may be sensitive, will be processed under the FOIA and the Privacy Act. In addition to the following FOIA regulations, *see* §§ 1.575 through 1.584 for regulations applicable to Privacy Act records.

(c) Requests for records relating to a claim administered by VA pursuant to 38 U.S.C. 5701 will be processed under the FOIA and 38 U.S.C. 5701. In addition to the following FOIA regulations, *see* §§ 1.500 through 1.527 for regulations implementing 38 U.S.C. 5701.

(d) Requests for records relating to healthcare quality assurance reviews pursuant to 38 U.S.C. 5705 will be processed under the FOIA and 38 U.S.C. 5705. In addition to the following FOIA regulations, *see* 38 CFR 17.500 through 17.511 for regulations implementing 38 U.S.C. 5705.

(e) Requests for records relating to treatment for the conditions specified in 38 U.S.C. 7332, such as drug abuse, alcoholism or alcohol abuse, infections with the Human Immunodeficiency Virus (HIV), or sickle cell anemia, will be processed under the FOIA and 38 U.S.C. 7332. In addition to the following FOIA regulations, *see* §§ 1.460 through 1.499 of this part for regulations implementing 38 U.S.C. 7332.

Authority: Sections 1.550 to 1.562 issued under 72 Stat. 1114; 38 U.S.C. 501, 552, 552a, 5701, 5705, 7332.

4. Add § 1.551 to read as follows:

§ 1.551 Definitions.

As used in §§ 1.550 through 1.562, the following definitions apply:

Agency means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal government, or independent regulatory entity.

Appeal means a requester's written disagreement with an adverse determination under the FOIA.

Beneficiary means a veteran or other individual who has received benefits (including medical benefits) or has applied for benefits pursuant to title 38, United States Code.

Benefits records means an individual's records, which pertain to programs under any of the benefits laws administered by the Secretary of Veterans Affairs.

Business day means the time during which typical Federal government offices are open for normal business. It does not include Saturdays, Sundays, or Federal legal public holidays. The term "day" means business day unless otherwise specified.

Business information means confidential or privileged commercial or financial information obtained by VA from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

Component means each distinct VA entity, including Administrations, staff offices, services, or facilities.

Expedited processing means giving a FOIA request priority for processing ahead of other pending requests because VA has determined that the requester has shown an exceptional need or urgency for the records as provided in these regulations.

Fees. For fees and fee-related definitions, *see* § 1.561(b).

FOIA Officer means the individual within a VA component whose responsibilities include addressing and granting or denying requests for records under the FOIA.

Perfected request means a written FOIA request that meets the requirements set forth in § 1.554 of this part and for which there are no remaining issues about the payment of applicable fees or any other matter that requires resolution prior to processing.

Reading room means space made available, as needed, in VA components where records are available for review pursuant to 5 U.S.C. 552(a)(2). Ordinarily, the VA component providing a public reading room space will be the component that maintains the record.

Record means a document, a portion of a document, and information contained within a document, and can include information derived from a document or a database. Such documents may be maintained in paper, electronic, and other forms, but do not include objects, such as tissue slides, blood samples, or computer hardware.

Request means a demand for records under the FOIA as described below. The term *request* includes any action emanating from the initial demand for records, including an appeal related to the initial demand.

Requester means, generally, any individual, partnership, corporation, association, or foreign or state or local government, which has made a demand to see or receive a copy of an agency record.

Sensitive medical or mental health records mean documents containing information that, with a reasonable degree of medical certainty, are likely to have a serious adverse effect on an individual's mental or physical health if revealed to him or her.

Submitter means any person or entity (including corporations, state, local and tribal governments and foreign governments) from whom VA obtains trade secrets or confidential commercial or financial information either directly or indirectly.

VA means the Department of Veterans Affairs.

VA Central Office (VACO) means the headquarters of the Department of Veterans Affairs. The mailing address is 810 Vermont Avenue, NW., Washington, DC 20420.

Written or *in writing* means communications such as letters, photocopies of letters, electronic mail, and facsimiles (faxes), and does not include any form of oral communication.

5. Revise §§ 1.552 and 1.553 to read as follows:

§ 1.552 General provisions.

(a) *Additional information.* The following Internet link will provide access to VA's information that is electronically available under the FOIA: *http://www.foia.va.gov/.*

(b) *Public Liaisons.* VA has made available to the requester FOIA Public Liaisons to assist in the resolution of disputes between the agency and the requester. Contact information for VA's FOIA Public Liaisons can be found on VA's FOIA homepage. *See* § 1.552(a) for the pertinent Internet address.

(c) *FOIA Annual Report.* Under 5 U.S.C. 552(e), VA is required to prepare an annual report regarding its FOIA activities. The report includes information about FOIA requests and appeals. Copies of VA's annual FOIA report may be obtained from the Department's Chief FOIA Officer or by visiting VA's FOIA Web site. *See* § 1.552(a) for the pertinent Internet address.

§ 1.553 Public reading rooms.

(a) VA maintains a public reading room electronically at its FOIA home page on the Internet, which contains the records that the FOIA requires to be regularly made available for public inspection and copying. *See* § 1.552(a) for the pertinent Internet address. Each VA component is responsible for determining which of its records are required to be made available and for making its records available electronically. VA also makes available for public inspection and copying current subject-matter indices of its reading room records that are available electronically. Each index shall be updated regularly, at least quarterly, with respect to newly included records.

(b) VA may delete some of the information in the records that it is making publicly available. Information in a public reading room record will be redacted, for example, if its release would be a clearly unwarranted invasion of an individual's personal privacy.

(c) Some VA components may also maintain physical public reading rooms. Information regarding these components and their contact information is available on VA's FOIA home page on the Internet. *See* § 1.552(a) for the pertinent Internet address. If you do not have access to the Internet and wish to obtain information regarding publicly available information or components that have a physical reading room, you may write the Department's Chief FOIA Officer at the following address: Department of Veterans Affairs, FOIA Service (005R1C), 810 Vermont Avenue, NW., Washington, DC 20420.

§ 1.553a [Removed]

6. Remove § 1.553a.

7. Revise § 1.554 to read as follows:

§ 1.554 Requirements for making requests.

(a) *Requests by letter and facsimile (fax).* The FOIA request must be in writing. VA accepts facsimiles (faxes) as written FOIA requests. If the request concerns documents protected by records to which another confidentiality statute applies, the request must contain an image of the requester's handwritten signature. To make a request for VA records, write directly to the FOIA Officer for the VA component that maintains the records. If requesting records from a particular medical facility or regional office, for example, the request should be sent to the FOIA Office at the address listed for that component. If seeking records from a component within VA's Central Office, the request should be sent to the Central Office address of the FOIA Office listed for that component. A list of FOIA contacts is available on the Internet. A legible return address must be included with your FOIA request; you may wish to include other contact information as well, such as a telephone number and an electronic mail (e-mail) address. If you are not sure where to send your request, you should seek assistance from the FOIA Contact for the office that you believe manages the programs whose records you are requesting or send the request to the Director, FOIA Service (005R1C), 810 Vermont Avenue, NW., Washington, DC 20420, who will refer it for action to the FOIA contact at the appropriate component. For the quickest possible handling, the request letter and the envelope of any FOIA request should be marked "Freedom of Information Act Request." You may find it helpful to refer to VA's FOIA home page on the Internet when making your request; available reference material includes VA's FOIA Reference Guide and the text of the FOIA. *See* § 1.552(a) for the pertinent Internet address.

(b) *Requests by e-mail.* VA will accept an e-mail request. If the request concerns documents protected by records to which another confidentiality statute applies, the email transmission must contain an image of the requester's handwritten signature, such as an attachment that shows the individual's handwritten signature. In order to assure prompt processing, e-mail FOIA requests must be sent to official VA FOIA mailboxes established for the purpose of receiving FOIA requests. An e-mail FOIA request that is sent to an individual VA employee's mailbox, or to any other entity, will not be considered a perfected FOIA request. Mailbox addresses designated to receive e-mail FOIA requests are available on VA's FOIA home page. See § 1.552(a) for the pertinent Internet address.

(c) *Making a request for another individual's records.* If you are requesting records about another individual, it will be helpful under certain circumstances to provide proof that you are authorized to obtain the records, such as a legally sufficient prior written authorization for the release of information signed by that individual, proof that the individual is deceased (*e.g.,* a copy of a death certificate), or proof that the requester is the authorized representative of the individual or the individual's estate. This information will assist in determining whether and to what degree the records may be released.

(d) *Description of records sought.* (1) You must describe the records that you seek in enough detail to allow VA personnel to locate them with a reasonable amount of effort. To the extent possible, you should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the document. Generally, the more information you provide about the record you are seeking, the more likely VA personnel will be able to locate any responsive records. Wide-ranging requests that lack specificity, or contain descriptions of very general subject matters, with no description of specific records, may be considered "not reasonably described" and thus not subject to further processing.

(2) Requests for voluminous amounts of records may be placed in a complex track of a multitrack processing system pursuant to § 1.556(b); such requests also may meet the criteria for "unusual circumstances," which are processed in accordance with § 1.556(c) and may require more than twenty (20) business days to process despite the agency's exercise of due diligence.

(3) If the FOIA Officer determines that your request does not reasonably describe the records sought, the FOIA Officer will tell you why the request is insufficient. The FOIA Officer will also provide an opportunity to discuss your request by documented telephonic communication or written

correspondence in order to modify it to meet the requirements of this section and place your request into a more expedient track.

(4) The time limit for VA to process your FOIA request will not start it determines that you have reasonably described the records that you seek in the FOIA request. If VA seeks additional clarification regarding your request and does not receive your written response within thirty (30) calendar days of the date of its communication with you, VA will conclude that you are no longer interested in pursuing your request and will close its files on your request.

(e) *Agreement to pay fees.* The time limit for processing your request will be tolled while any fee issue is unresolved. If the FOIA Officer anticipates that the fees for processing your request will exceed the amount that you that you have stated that you are willing to pay or will amount to more than $25.00 or the amount set by OMB fee guidelines, whichever is higher, the FOIA Officer will notify you. In such cases, the FOIA Officer may require you to agree in writing to pay the estimated fee. In addition, if the estimated fee amount exceeds $250.00 or you previously have failed to pay a FOIA fee in a timely manner, the FOIA Officer may require you to pay the FOIA fee in advance, before beginning to process your FOIA request. If the FOIA Officer does not receive your written response within ten (10) business days of the date of the FOIA Officer's communication with you, she or he will conclude that you are no longer interested in pursuing your request and will close your request. If you request a fee waiver under § 1.561, you nonetheless may state your willingness to pay a fee up to an identified amount in the event that the fee waiver is denied; this will allow the component to process your FOIA request while considering your fee waiver request. If you are required to pay a fee in advance, and you paid the fee, and if VA later determines that you overpaid or that you are entitled to a full or partial fee waiver, a refund will be made. (For more information on the collection of fees under the FOIA, *see* § 1.561.)

(f) You must meet all of the requirements of this section in order for your request to be perfected.

§ 1.554a [Removed]

8. Remove § 1.554a.

9. Revise §§ 1.555 through 1.557 to read as follows:

§ 1.555 Responsibility for responding to requests.

(a) *General.* Except as stated in paragraphs (c) and (d) of this section, the FOIA Officer of the component that first receives a request for records is responsible for either processing the request or referring it to the designated FOIA Officer for the appropriate component. Offices within the component that is responsible for processing the FOIA request shall provide the FOIA Officer all documents responsive to the request that are in their possession as of the date the search for responsive records begins.

(b) *Authority to grant or deny requests.* Each component shall designate a FOIA Officer who is responsible for making determinations pursuant to the FOIA.

(c) *Consultations and referrals.* When a component receives a request for a record, the FOIA Officer shall determine whether the request would be more properly addressed by another component of VA or by another entity within the Federal government. If the FOIA Officer of the component that receives the request determines that the component is best able to address the request, then the component shall do so. If the FOIA Officer determines that the component that receives the FOIA request is not best able to process the request, then she or he shall:

(1) Process the request after consulting with the component or agency best able to determine whether to disclose the record and with any other component or agency that has a substantial interest in it; or

(2) Refer the request for the record and the responsibility for responding to that request to the VA component or Federal agency best able to address the request. Ordinarily, VA will presume that the component or agency that created the record is best able to determine whether to disclose it.

(d) *Classified information.* The FOIA Officer will refer requests for records containing classified information to the component or agency that classified the information for processing.

(e) *Notice of referral.* Whenever a FOIA Officer refers all or part of a request and responsibility for processing the request to another component or agency, the FOIA Officer will notify the requester in writing of the referral and provide the requester the name and contact information of the entity to which the request has been referred, after consulting with the entity to which the request is to be referred to ensure that the request is being referred to the correct entity. If only part of the request was referred, the FOIA Officer will inform the requester and identify the referred part at the time of the referral or in the final response.

§ 1.556 Timing of responses to requests.

(a) *General.* Components ordinarily shall respond to requests according to their order of receipt and within the time frames established under the FOIA.

(b) *Multitrack processing.* (1) VA will use two processing tracks to distinguish between the complexity of a request for records: Simple and complex, based upon the amount of work and/or time needed to process the request, including consideration of the number of pages involved.

(2) The FOIA Officer shall advise the requester of the track into which the request has been placed and of the criteria of the faster track. The FOIA Officer will provide requesters in the slower track the opportunity to limit the scope of their requests in order to qualify for processing in the faster track. The FOIA Officer may contact the requester either by telephone or in writing, whichever the FOIA Officer determines is most efficient and expeditious; telephonic communication will be documented.

(c) *Unusual circumstances.* (1) FOIA Officers may encounter "unusual circumstances," where it is not possible to meet the statutory time limits for processing the request. In such cases, the FOIA Officer will extend the twenty (20)-business day time limit for ten (10) more business days and notify the requester in writing of the unusual circumstances and of the date by which it expects to complete processing of the request. Where the extension is for more than ten (10) business days, the FOIA Officer will provide the requester with an opportunity to either modify the request so that it may be processed within the time limits or to arrange an alternative time period with the FOIA Officer for processing the request or a modified request. Unusual circumstances consist of the following:

(i) The need to search for and collect the requested records from field facilities or other components other than the office processing the request;

(ii) The need to search for, collect and examine a voluminous amount of separate and distinct records that are the subject of a single request; or

(iii) The need for consultation with two or more components or another agency having a substantial interest in the subject matter of a request.

(2) Where the FOIA Officer reasonably believes that certain requests from the same requester, or a group of requesters acting in concert, actually constitute the same request that would otherwise

satisfy the unusual circumstances specified in this paragraph, and the requests involve clearly related matters, the FOIA Officer may aggregate those requests. Multiple requests involving unrelated matters will not be aggregated.

(d) *Expedited processing.* (1) Requests will be processed out of the order in which they were received by the component responsible for processing the FOIA request and given expedited treatment when VA determines that there is a compelling need to process the FOIA request promptly and out of order. A compelling need exists when VA determines that:

(i) The failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) There is an urgency to inform the public concerning actual or alleged Federal government activity, if the request is made by a person primarily engaged in disseminating information;

(iii) In the discretion of the FOIA Officer, the regulations warrant such treatment; or

(iv) Where there is widespread and exceptional interest in which possible questions exist about the government's integrity which affect public confidence.

(2) A requester who is seeking expedited processing must submit a statement, certified to be true to the best of that person's knowledge and belief, providing a detailed basis for how there is a compelling need. VA may waive the requirement for certification of the statement of compelling need as a matter of administrative discretion.

(3) Within ten (10) calendar days of its receipt of a request for expedited processing, the FOIA Officer shall determine whether to grant the request and will provide the requester written notice of the decision. If the FOIA Officer grants a request for expedited processing, the FOIA Officer shall give the request priority and process it as soon as practicable. If the FOIA Officer denies the request for expedited processing, the requester may appeal the denial, which appeal shall be addressed expeditiously.

§ 1.557 Responses to requests.

(a) *Acknowledgement of requests.* When a request for records is received by a component designated to receive requests, the component's FOIA Officer will assign a request number for future reference and send the requester a written acknowledgement of receipt.

(b) *Processing of requests.* Upon receipt of a perfected request by the appropriate component, the FOIA Officer will make a reasonable effort to search for records responsive to the request. The FOIA Officer ordinarily will include as responsive those records in its possession and control as of the date the search for responsive records began. This includes searching for records in electronic form or format, unless to do so would interfere significantly with the agency's automated information systems. If fees for processing the request are due under § 1.561, the FOIA Officer shall inform the requester of the amount of the fee as provided in § 1.554(e) and § 1.561. Where a FOIA Officer grants the request in part, the FOIA shall mark, redact, or annotate the records to be released to show the amount of information deleted and the exemption under which the deletion is made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted also will be indicated on the record, if technically feasible. The FOIA Officer will also provide the records in the form or format requested by the individual, if readily reproducible in that form or format.

(c) *Time limits for processing requests.* Ordinarily, a component will have twenty (20) business days from the date of VA's receipt of the request to make a determination whether to grant a request in its entirety, grant in part, or deny a request in its entirety. If the request must be referred to another component, it will be referred as quickly as possible, but no later than ten (10) business days after the referring office receives the FOIA request.

(d) *Adverse determinations of requests.* Whenever a component makes an adverse determination denying a request in any respect, the component FOIA Officer shall promptly notify the requester of the adverse determination in writing. Adverse determinations include the following: A determination to withhold a requested record in whole or in part; a determination that the requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been sought is not a record subject to the FOIA; a determination on any disputed fee matter, including the denial of a fee waiver; and a denial of a request for expedited treatment. The adverse determination notice must be signed by the component head or the component's FOIA Officer, and will include the following:

(1) The name and title or position of the person responsible for the adverse determination;

(2) A brief statement of the reason(s) for the denial, including any FOIA exemptions applied by the FOIA Officer in denying the request;

(3) The amount of information withheld in number of pages or other reasonable form of estimation; an estimate is not necessary if the volume is indicated on redacted pages disclosed in part or if providing an estimate would harm an interest provided by an applicable exemption; and

(4) Notice that the requester may appeal the adverse determination and a description of the requirements for an appeal under § 1.559 of this part.

10. Add §§ 1.558 through 1.562 to read as follows:

* * * * *

Sec.

1.558 Business information.
1.559 Appeals.
1.560 Maintenance and preservation of records.
1.561 Fees.
1.562 Other rights and services.

* * * * *

§ 1.558 Business information.

(a) *General.* Business information received by VA from a submitter will be considered under the FOIA pursuant to this section and in accordance with the requirements set forth in § 1.557 of this part.

(b) *Designation of business information.* A submitter of business information may designate that specific records or portions of records submitted are business information, at the time of submission or within a reasonable time thereafter. The submitter must use good faith efforts in designating records that the submitter claims could be expected to cause substantial competitive harm and thus warrant protection under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4). The submitter may mark the record submission as confidential or use the words "business information" or describe the specific records that contain business information. Such designation will be considered, but will not control, the FOIA Officer's decision on disclosing the material. A designation will remain in effect for a period of not more than 10 years after receipt by VA, unless the submitter provides acceptable justification for a longer period. A submitter may designate a shorter period by including an expiration date.

(c) *Notices to submitters.* (1) The FOIA Officer shall promptly notify a submitter in writing of a FOIA request seeking the submitter's business information whenever the FOIA Officer has reason to believe that the information may be protected under

FOIA Exemption 4, 5 U.S.C. 552(b)(4), regarding business information. The written notice will provide the submitter an opportunity to object to disclosure of any specified portion of the records within the time period specified in the notice. The notice will either describe in detail the business information requested (e.g., an entire contract identified by a unique number) or shall provide copies of the requested record(s) or record portions containing the business information. When notification of a voluminous number of submitters is required, the FOIA Officer may notify the submitters by posting or publishing the notice in a place reasonably likely to accomplish notification.

(2) If the FOIA Officer determines to release business information over the objection(s) of a submitter, the FOIA Officer will notify the submitter pursuant to paragraph (e) of this section.

(3) Whenever the FOIA Officer notifies a requester of a final decision, the FOIA Officer will also notify the submitter by separate correspondence. This notification may be contained in VA's FOIA decision.

(4) Exceptions to this notice provision are contained in paragraph (f) of this section.

(d) *Opportunity to object to disclosure.* When notification to a submitter is made pursuant to paragraph (c)(1) of this section, the submitter may object to the disclosure of any specified portion(s) of the record(s). The submitter's objection(s) must be in writing, addressed to the FOIA Officer, and must be received by the reasonable date specified in the FOIA Officer's notice in order for VA to consider such objections. If the submitter has any objection to disclosure of the record(s) requested, or any specified portion(s) thereof, the submitter must identify the specific record(s) or portion(s) of records for which objection(s) are made. The objection will specify in detail all grounds for withholding any record(s) or portion(s) of the record(s) upon which disclosure is opposed under any exemption of the FOIA. In particular, if the submitter is asserting that the record is protected under Exemption 4, 5 U.S.C. 552(b)(4), it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. The submitter must explain in detail how and why disclosure of the specified records would likely cause substantial competitive harm in the case of a required submission or state whether the records would customarily be disclosed by the submitter upon a request from the public in the case of a voluntary submission. The submitter's objections must be contained within a single written response; oral responses or subsequent, multiple responses generally will not be considered. If a submitter does not respond to the notice described in paragraph (c)(1) of this section within the specified time limit, the submitter will be considered to have no objection to disclosure of the information.

(e) *Consideration of objection(s) and notice of intent to disclose.* The FOIA Officer will consider all pertinent factors, including but not limited to a submitter's timely objection(s) to disclosure and the specific grounds provided by the submitter for non-disclosure in deciding whether to disclose business information. Information provided by the submitter after the specified time limit and after the component has made its disclosure decision generally will not be considered. In addition to meeting the requirements of § 1.557, when a FOIA Officer decides to disclose business information over the objection of a submitter, the FOIA Officer will provide the submitter with written notice, which includes:

(1) A statement of the reason(s) why each of the submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date of not less than ten (10) days from the date of the notice (to allow the submitter time to take necessary legal action).

(f) *Exceptions to notice requirements.* The notice requirements set forth in paragraphs (c) and (g) of this section will not apply if:

(1) The FOIA Officer determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public; or

(3) Disclosure of the information is required by statute, other than the FOIA, or by a regulation issued in accordance with the requirements of Executive Order 12600 or any other Executive Order.

(g) *Notice to requesters.* When VA receives a request for records that may contain confidential commercial information protected by FOIA Exemption 4,5 U.S.C. 552(b)(4), regarding business information, the requester will be notified that the request is being processed under the provisions of this regulation and, as a consequence, there may be a delay in receiving a response. The notice to the requester will not include any of the specific information contained in the records being requested.

§ 1.559 Appeals.

(a) *Informal resolution prior to appeal.* Before filing an appeal, you may wish to communicate with the contact person listed in the FOIA response or the component's FOIA Officer to see if the issue can be resolved informally. Informal resolution of your concerns may be appropriate, for example, where the agency has not responded to your request or where you believe the search conducted was not adequate; in this example, additional information may assist in resolving the matter.

(b) *How to file and address a written appeal.* You may appeal an adverse determination denying your request, in any respect, to the VA Office of the General Counsel (024), 810 Vermont Avenue, NW., Washington, DC, 20420. Any appeals concerning any Office of Inspector General records should be referred to the VA Office of Inspector General, Office of Counselor (50), 810 Vermont Avenue, NW., Washington, DC 20420. The FOIA appeal must be in writing. VA accepts facsimiles (faxes) as written FOIA appeals. If the appeal concerns documents protected by records to which another confidentiality statute applies, the appeal must contain an image of the requester's handwritten signature, such as an attachment that shows the individual's handwritten signature. Information regarding where to fax your FOIA appeal is available on VA's FOIA home page on the Internet. *See* § 1.552(a) for the pertinent Internet address. A legible return address must be included with your FOIA appeal; you may include other contact information as well, such as a telephone number and an electronic mail (e-mail) address.

(c) *How to file an e-mail appeal.* VA will accept a FOIA appeal by e-mail. If the request concerns documents protected by records to which another confidentiality statute applies, the email transmission must contain an image of the requester's handwritten signature, such as an attachment that shows the individual's handwritten signature. In order to assure prompt processing, e-mail FOIA appeals must be sent to official VA FOIA mailboxes established for the purpose of receiving FOIA appeals; an e-mail FOIA appeal that is sent to an individual VA employee's mailbox, or to any other entity, will not be considered a perfected FOIA appeal. Mailbox addresses designated to receive e-mail FOIA appeals are available on VA's FOIA home page. *See* § 1.552(a) for the pertinent Internet address.

(d) *Time limits and content of appeal.* Your appeal to the VA OGC (024), or VA Office of Inspector General (50), as appropriate, must be postmarked no later than sixty (60) calendar days of the

date of the adverse determination. Your appeal must clearly identify the determination that you are appealing, including any assigned request number. Other information should also be included, such as the name of the FOIA officer, the address of the component, the date of component's determination, if any, and the precise subject matter of your appeal. If you are appealing only a portion of the component's determination, you must specify which part of the determination you are appealing. You should include copies of your request and VA's response, if any. An appeal is not perfected until VA either receives the information identified above or the appeal is otherwise sufficiently defined. Appeals should be marked "Freedom of Information Act Appeal." The General Counsel, Deputy General Counsel, or Assistant General Counsel with jurisdiction over information disclosure matters (024) will act on behalf of the Secretary on all appeals under this section, except those pertaining to the Office of Inspector General. The designated official in the Office of Inspector General will act on all appeals pertaining to Office of Inspector General records. A determination by the General Counsel, Deputy General Counsel, or Assistant General Counsel, or designated official within the Office of Inspector General, will be the final VA action.

(e) *Responses to appeals.* The Office of the General Counsel or the Office of Inspector General, as appropriate, will provide you a decision on your appeal in writing that includes a brief statement of the reasons for its determination, including, if applicable, any FOIA exemptions applied.

(f) *Court review.* You must first appeal the adverse determination in accordance with this section before seeking review by a court.

§ 1.560 Maintenance and preservation of records.

(a) Each component will preserve all correspondence pertaining to FOIA requests as well as copies of pertinent records, until disposition is authorized under title 44, U.S.C., or the National Archives and Records Administration's General Records Schedule 14.

(b) The FOIA Officer must maintain copies of records that are the subject of a pending request, appeal, or lawsuit under the FOIA. A copy of all records shall be provided promptly to the Office of the General Counsel upon request.

§ 1.561 Fees.

(a) *General.* Components will charge for processing requests under the FOIA in accordance with paragraph (c) of this section, except where fees are limited under paragraph (e) of this section or where a waiver or reduction of fees is granted under paragraph (n) of this section. The FOIA Officer will collect all applicable fees before releasing copies of requested records to a requester. Requesters must pay fees by check or money order made payable to the Treasury of the United States. Note that fees associated with requests from VA beneficiaries, applicants for VA benefits, or other individuals, for records retrievable by their names or individual identifiers processed under 38 U.S.C. 5701 (records associated with claims for benefits) and 5 U.S.C. 552a (the Privacy Act), will be assessed fees in accordance with the applicable regulatory fee provisions relating to VA benefits and VA Privacy Act records.

(b) *Definitions.* For purposes of assessing or determining fees, the following definitions apply:

(1) *All other requests* means a request that does not fit into any of the categories in this section.

(2) *Commercial use request* means a request from or on behalf of one who seeks information for a use or purpose that furthers his or her commercial, trade, or profit interests, to include furthering those interests through litigation. To the extent possible, the FOIA Officer shall determine the use to which a requester will put the requested records. When the intended use of the records is unclear from the request or when there is reasonable cause to doubt the use to which the requester will put the records sought, the FOIA Officer will provide the requester a reasonable opportunity to submit further clarification.

(3) *Direct costs* mean expenses that VA incurs in responding to a FOIA request, including searching for and duplicating (and in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits costs) and the cost of operating duplication machinery. Direct costs do not include overhead expenses, such as the costs of space or heating and lighting of the facility where the records are kept.

(4) *Duplication* means making a copy of a record necessary to respond to a FOIA request; copies may take the form of paper, microform, audiovisual materials or machine readable-documentation (*e.g.,* magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(5) *Educational institution* means a pre-school, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research. To be in this category, the FOIA Officer must make a determination that the request is authorized by and made under the auspices of a qualifying institution and that the records are sought to further a scholarly research goal of the institution and not the individual goal of the requester or a commercial goal of the institution.

(6) *Non-commercial scientific institution* means an institution that is not operated on a "commercial" basis (as that term is defined in paragraph (b)(2) of this section) and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry. To be in this category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not sought for a commercial use.

(7) *Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase or subscription or free distribution to the general public. These examples are not all-inclusive. As methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media that otherwise meet the criteria for news media shall be considered to be news-media entities. Freelance journalists may be regarded as working for a news-media entity if they can demonstrate a solid basis for expecting publication through that entity, even though not actually employed by it. A publication contract would be the clearest proof, but the requester's publication history may also

be considered. To be in this category, a requester must not be seeking the requested records for a commercial use; a records request supporting the requester's news-dissemination function shall not be considered to be for a commercial use.

(8) *Review* means examining a record including audiovisual, electronic mail, data bases, documents and the like in response to a commercial use request to determine whether any portion of it is exempt from disclosure. Review includes the deletion of exempt material or other processing necessary to prepare the record(s) for disclosure. Review time includes time spent contacting any submitter and considering or responding to any objections to disclosure made by a submitter under § 1.558(d) but does not include time spent resolving general legal or policy issues regarding the application of exemptions. Review costs are recoverable even if, after review, a record is not disclosed.

(9) *Search* means the process of looking for and retrieving records that are responsive to a request, including line-by-line or page-by-page identification of responsive information within records. *Search* also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format. The component will conduct searches in the most efficient and least expensive manner reasonably possible. For example, line-by-line searches will not be conducted when duplicating an entire document is a less expensive and quicker method of complying with a request.

(c) *Categories of requesters and fees to be charged each category.*

There are four categories of FOIA requesters: Commercial use requesters, educational and non-commercial scientific institutional requesters, representatives of the news media, and all other requesters. Unless a waiver or reduction of fees is granted under paragraph (n) of this section or is limited in accordance with paragraph (e) of this section, specific levels of fees will be charged for each category as follows:

(1) *Commercial use requesters.* Subject to the limitations in paragraph (e) of this section, commercial use requesters will be charged the full direct costs of the search, review, and duplication of records sought. Commercial use requesters are not entitled to 2 hours of free search time or the first 100 pages of reproduced documents free of charge. The FOIA Officer may charge a commercial use requester for time spent searching even if they do not locate any responsive record(s) or if they withhold the record(s) located as entirely exempt from disclosure.

(2) *Educational and non-commercial scientific institution requesters.* Subject to the limitations in paragraph (e) of this section, educational and non-commercial scientific institution requesters will be charged for the cost of reproduction only, excluding charges for the first 100 pages.

(3) *Representative of the news media.* Subject to the limitations in paragraph (e) of this section, representatives of the news media will be charged for the cost of reproduction only, excluding charges for the first 100 pages.

(4) *All other requesters.* Subject to the limitations in paragraph (e) of this section, a requester who does not fit into any of the categories in this section will be charged fees to recover the full, reasonable direct cost of searching for and reproducing records responsive to a request, except that the first 2 hours of search time and the first 100 pages of reproduction will be furnished without cost. The FOIA Officer may charge all other requesters for time spent searching even if the component does not locate any responsive record(s) or if they withhold the record(s) located as entirely exempt from disclosure.

(d) *Fees to be charged.* The following fees will be used when calculating the fee owed pursuant to a request or appeal. The fees also apply to making documents available for public inspection and copying under § 1.553 of this part.

(1) *Search.* (i) *Search fees.* When a FOIA Officer determines that a search fee applies, the fee will be based on the hourly salary of VA personnel performing the search, plus 16 percent of the salary. The type and number of personnel involved in addressing the request or appeal depends on the nature and complexity of the request and responsive records. Fees are charged in quarter hour increments.

(ii) *Computer search.* In cases where a computer search is required, the requester will be charged the direct costs of conducting the search, although certain requesters (as provided in paragraph (e)(1) of this section) will be charged no search fee and certain other requesters (as provided in paragraph (e)(4) of this section) will be entitled to the cost of 2 hours of employee search time without charge. When a computer search is required, VA will combine the hourly cost of operating the computer with the employee's salary, plus 16 percent of the salary. When the cost of the search (including the employee time, to include the cost of developing a search methodology, and the cost of the computer to process a request) equals the dollar amount of 2 hours of the salary of the employee performing the search, VA will begin to assess charges for a computer search.

(2) *Duplication.* When a duplication fee applies, the FOIA Officer will charge a fee of 15 cents per one-sided page for a paper photocopy of a record; no more than one copy will be provided. For copies produced by computer, such as tapes and discs, the FOIA Officer will charge the direct costs of producing the copy, including employee time. For other forms of duplication, the FOIA Officer will charge the direct costs of that duplication.

(3) *Review.* When review fees apply, review fees will be charged at the initial level of review only, when the component responsible for processing the request determines whether an exemption applies to a record or portion of a record. For review at the appeal level, no fee will be charged for an exemption that has already been applied and is determined to still apply. However, record or record portions withheld under an exemption that is subsequently determined not to apply may be reviewed again to determine whether any other exemption not previously considered applies; the costs of that review are chargeable. Review fees will be charged at the same rates as those charged for search under paragraph (d)(1) of this section.

(e) *Limitations on charging fees.* (1) No search fee will be charged for requests by educational institutions, non-commercial scientific institutions, or representatives of the news media.

(2) No search or review fee will be charged for a quarter hour period unless more than half of that period is required for search or review.

(3) No search fee (or duplication fee, when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution whose purpose is scholarly or scientific research, or a representative of the news media) will be charged in accordance with this section if the agency fails to comply with the time limit under § 1.556(a), and if no unusual or exceptional circumstances apply to the processing of the request pursuant to § 1.556(c). Duplication and search fees may still be charged to commercial use requesters. Duplication fees may still be charged for "all other" requesters.

(4) Except for requesters seeking records for a commercial use, the following will be provided without charge:

(i) The first 100 pages of duplication (or the cost equivalent).

(ii) The first 2 hours of search time (or the cost equivalent).

(5) Whenever a total fee calculated under paragraph (d) of this section is less than $25.00, no fee will be charged.

(6) VA may provide free copies of records or free services in response to an official request from other government agencies and Congressional offices and when a component head or designee determines that doing so will assist in providing medical care to a VA patient or will otherwise assist in the performance of VA's mission.

(f) The following table summarizes the chargeable fees for each category of requester.

Category	Search fees	Review fees	Duplication fees
(1) Commercial Use	Yes	Yes	Yes.
(2) Educational Institution	No	No	Yes (100 pages free).
(3) Non-Commercial Scientific Institution	No	No	Yes (100 pages free).
(4) News Media	No	No	Yes (100 pages free).
(5) All other	Yes (2 hours free)	No	Yes (100 pages free).

(g) *Fee schedule.* If it is determined that a fee will be charged for processing your FOIA request, VA will charge you to search for, review, and duplicate the requested records according to your fee category (*see* § 1.561(c)) and the following fee schedule. In addition, VA will charge you for any special handling or services performed in connection with processing your request and/or appeal. The following fees will be used by VA; these fees apply to services performed in making documents available for public inspection and copying under § 1.553 as well. The duplicating fees also are applicable to records provided in response to requests made under the Privacy Act. Fees will not be charged under either the FOIA or the Privacy Act where the total amount of fees for processing the request is $25.00 or less or where the requester has met the requirements for a statutory fee waiver.

(1) Search and review (review applies to commercial-use requesters only). Fees are based on the average hourly salary (base salary plus DC locality payment), plus 16 percent for benefits, of employees in the following three categories. Fees will be increased annually consistent with Congressionally approved pay increases. Fees are charged in quarter-hour increments.

(i) Clerical—Based on GS–6, Step 5, pay (all employees at GS–7 and below).

(ii) Professional—Based on GS–11, Step 7, pay (all employees at GS–8 through GS–12).

(iii) Managerial—Based on GS–14, Step 2, pay (all employees at GS–13 and above).

Note: Fees for the current fiscal year are posted on VA's FOIA home page (*see* § 1.552(a) for the pertinent Internet address).

(2) Schedule of fees:

Activity	Fees
(i) Duplication of standard size (8½″ × 11″; 8½″ × 14″; 11″ × 14″) paper records	$0.15 per page
(ii) Duplication of non-paper items (e.g., x-rays), paper records which are not of a standard size (e.g., architectural drawings/construction plans or EKG tracings), or other items which do not fall under category (1), in paragraph (c)(1) of this section.	Direct cost to VA.
(iii) Record search by manual (non-automated) methods	Basic hourly salary rate of the employee(s), plus 16 percent * **Note**—If a component uses a single class of personnel for a search, e.g., all clerical or professional, an average rate for the grades of employees involved in the search may be used.
(iv) Record search using automated methods, such as by computer	Direct cost to perform search.
(v) Record review (for Commercial Use Requesters only)	Basic hourly rate of employees performing review to determine whether to release records and to prepare them for release, plus 16 percent.
(vi) Other activities, such as: Attesting under seal or certifying that records are true copies; sending records by special methods; forwarding mail; compiling and providing special reports, drawings, specifications, statistics, lists, abstracts or other extracted information; generating computer output; providing files under court process where the federal government is not a party to, and does not have an interest in, the litigation.	Direct cost to VA.

(h) *Notification of fee estimate or other fee issues.* (1) Threshold for charging fees: Except for situations covered by § 1.556(k), VA will not charge you if the fee is $25.00 or less.

(2) When a FOIA Officer determines or estimates that the fees to be charged under this section will amount to more than $25.00 or the amount set by OMB fee guidelines, whichever is higher, the FOIA Officer will notify you in writing of the actual or estimated amount of the fees, and ask you to provide written assurance of the payment of all fees or fees up to a designated amount, unless you have indicated a willingness to pay fees as high as those anticipated. Any such agreement to pay the fees shall be memorialized in writing. In addition, when a requester does not provide sufficient information upon which VA can identify a fee category (*see* paragraphs (c)(1) through (4) of this section), or an issue otherwise arises regarding fee assessment, the FOIA Officer may seek clarification from the requester. In either case, the timeline for responding to the request will be tolled and no further work will be done on it until the fee issue has been resolved. If VA does not receive a written response from you within ten (10) days after contacting you regarding a fee issue, it will assume that you no longer wish to pursue the request and will close the file on your request.

(i) *Charges for other services.* Apart from the other provisions of this section, when special service, such as certifying

that records are true copies or sending them by other than ordinary mail, is requested, and the FOIA Officer chooses to provide such a service as a matter of administrative discretion, the direct costs of providing the service ordinarily will be charged.

(j) *Charging interest.* The FOIA Officer may charge interest on any unpaid bill starting on the 31st day following the date of billing the requester. Interest charges will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue until payment is received by the component. Components will follow the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365, 96 Stat. 1749), as amended, and its administrative procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(k) *Aggregating requests.* Whenever a FOIA Officer reasonably believes that a requester or group of requesters acting together is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer may aggregate those requests and charge accordingly. FOIA Officers may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. Where requests are separated by a longer period, the FOIA Officer will aggregate them only where there exists a solid basis for determining that aggregation is warranted under all the circumstances involved. Multiple requests involving unrelated matters will not be aggregated.

(l) *Advance payments.* (1) For requests other than those described in paragraphs (l)(2) and (l)(3) of this section, a FOIA Officer shall not require the requester to make an advance payment—in other words, a payment made before work is begun or continued on a request. Payment owed for work already completed (i.e., a prepayment before copies are sent to a requester) is not an advance payment.

(2) Where a FOIA Officer determines or estimates that a total fee to be charged under this section will be more than $250.00, it may require the requester to make an advance payment of an amount up to the amount of the entire anticipated fee before beginning to process the request.

(3) Where a requester has previously failed to pay a properly charged FOIA fee to any component within thirty (30) days of the date of billing, a FOIA Officer may require the requester to pay the full amount due, plus any applicable interest as specified in this section, and to make an advance payment of the full amount of any anticipated fee, before the FOIA Officer begins to process a new request or continues to process a pending request from that requester.

(4) When a requester has a history of prompt payment, the FOIA Officer may accept a satisfactory assurance of full payment from a requester rather than an advance payment.

(5) In cases in which a FOIA Officer requires advance payment or payment is due under this section, the timeline for responding to the request will be tolled and further work will not be done on it until the required payment is received.

(m) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. Where records responsive to requests are maintained for distribution by agencies operating such statutorily-based fee schedule programs, the FOIA Officer will inform requesters of the steps for obtaining records from those sources so that they may do so most economically.

(n) *Requirements for waiver or reduction of fees.* (1) Waiving or reducing fees. Fees for processing your request may be waived if the requester meets the criteria listed in this section. The requester must submit adequate justification for a fee waiver; without adequate justification, the request will be denied. The FOIA Officer may, at the FOIA Officer's discretion, communicate with you to request additional information if necessary regarding your fee waiver request. If such additional information is not received within ten (10) business days, VA will assume that the requester does not agree to pay the required fees and the file will be closed pending receipt of your notice that you will pay the required fee. Requests for fee waivers are decided on a case-by-case basis; receipt of a fee waiver in the past does not establish entitlement to a fee waiver each time a request is submitted.

(2) Records responsive to a request will be furnished without charge or at a charge reduced below that established under paragraph (d) of this section where a FOIA Officer determines, based on all available evidence, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(3) To determine whether the first fee waiver requirement is met, the FOIA Officer will consider the following factors:

(i) *The subject of the request: Whether the subject of the requested records concerns* "*the operations or activities of the government.*" The subject of the requested records must concern identifiable operations or activities of the federal government, with a connection that is direct and clear, not remote or attenuated.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is* "*likely to contribute*" *to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative about government operations or activities in order to be "likely to contribute" to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be as likely to contribute to such understanding where nothing new would be added to the public's understanding.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to* "*public understanding.*" The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area and ability and intention to effectively convey information to the public shall be considered. It shall be presumed that a representative of the news media will satisfy this consideration.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute* "*significantly*" *to public understanding of government operations or activities.* The public's understanding of the subject in question, as compared to the level of public understanding existing prior to the disclosure, must be enhanced by the disclosure to a significant extent. The FOIA Officer will not make value judgments about whether information that would contribute significantly to public understanding of the operations or activities of the government is important enough to be made public.

(4) To determine whether the second fee waiver requirement is met, the FOIA Officer will consider the following factors:

(i) *The existence and magnitude of a commercial interest: Whether the*

requester has a commercial interest that would be furthered by the requested disclosure. The FOIA Officer shall consider any commercial interest of the requester (with reference to the definition of "commercial use" in paragraph (b)(2) of this section), or of any person on whose behalf the requester may be acting, that would be furthered by the requested disclosure. Requesters shall be given an opportunity in the administrative process to provide explanatory information regarding this consideration.

(ii) *The primary interest in disclosure: Whether any identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is* "*primarily in the commercial interest of the requester.*" A fee waiver or reduction is justified where the public interest standard is satisfied and that public interest is greater in magnitude than that of any identified commercial interest in disclosure. The FOIA Officer ordinarily shall presume that where a news media requester has satisfied the public interest standard, the public interest will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(5) Where only some of the records to be released satisfy the requirements for a waiver of fees, a fee waiver will be granted only for those records which so qualify.

(6) Requests for the waiver or reduction of fees should address the factors listed in paragraph (n)(3) and (4) of this section, insofar as they apply to each request. FOIA Officers will exercise their discretion to consider the cost-effectiveness of their investment of administrative resources in this decision-making process, however, in deciding to grant waivers or reductions of fees.

(7) An appeal from an adverse fee determination will be processed in accordance with § 1.559.

(8) When considering a request for fee waiver, VA may require proof of identity.

§ 1.562 Other rights and services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

(Authority: Sections 1.550 to 1.562 issued under 72 Stat. 1114; 38 U.S.C. 501)

PART 2—DELEGATIONS OF AUTHORITY

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

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, and as noted in specific sections noted.)

12. Revise paragraph (e)(10) of § 2.6 to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(e) * * *

(10) The General Counsel, Deputy General Counsel, and the Assistant General Counsel for Professional Staff Group IV are authorized to make final Departmental decisions on appeals under the Freedom of Information Act, the Privacy Act, and 38 U.S.C. 5701, 5705 and 7332.

Authority: 38 U.S.C. 512

* * * * *

[FR Doc. 2010–25362 Filed 10–13–10; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2010–0715; FRL–9214–3]

Approval and Promulgation of Implementation Plans—Maricopa County (Phoenix) PM–10 Nonattainment Area; Serious Area Plan for Attainment of the 24-Hour PM–10 Standard; Clean Air Act Section 189(d)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: On September 9, 2010 (75 FR 54806), EPA published a proposed rule proposing to approve in part and disapprove in part State implementation plan (SIP) revisions submitted by the State of Arizona to meet, among other requirements, section 189(d) of the Clean Air Act (CAA) for the serious Maricopa County (Phoenix) nonattainment area (Maricopa area). Specifically, EPA proposed to disapprove provisions of the 189(d) plan because they do not meet applicable CAA requirements for emissions inventories as well as for attainment, five percent annual emission reductions, reasonable further progress and milestones, and contingency measures. EPA also proposed to disapprove the 2010 motor vehicle emission budget in the 189(d) plan as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4). EPA also proposed a limited approval and limited disapproval of State regulations for the control of PM–10 from agricultural sources. Finally, EPA proposed to approve various provisions of State statutes relating to the control of PM–10 emissions in the Maricopa area.

EPA is extending the comment period on the proposed rule from October 12, 2010 to October 20, 2010.

DATES: Any comments must arrive by October 20, 2010.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2010–0715, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

2. *E-mail: nudd.gregory@epa.gov.*

3. *Mail or deliver:* Gregory Nudd (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. 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.

Docket: The index to the docket for this action 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: Gregory Nudd, U.S. EPA Region 9, 415–947–4107, *nudd.gregory@epa.gov* or *http://www.epa.gov/region09/air/actions.*

SUPPLEMENTARY INFORMATION: On September 9, 2010 (75 FR 54806), EPA published a proposed rule proposing to approve in part and disapprove in part State implementation plan (SIP) revisions submitted by the State of Arizona to meet the Clean Air Act (CAA) requirements applicable to the serious Maricopa County (Phoenix) nonattainment area (Maricopa area). These requirements apply to the Maricopa area following EPA's June 6, 2007 finding that the area failed to meet its December 31, 2006 serious area deadline to attain the national ambient air quality standards (NAAQS) for particulate matter of ten microns or less (PM–10). Under CAA section 189(d), Arizona was required to submit a plan by December 31, 2007 providing for expeditious attainment of the PM–10 NAAQS and for an annual emission reduction in PM–10 or PM–10 precursors of not less than five percent per year until attainment (189(d) plan).

In the Agency's September 9, 2010 proposed rule, EPA proposed to disapprove provisions of the 189(d) plan for the Maricopa area because they do not meet applicable CAA requirements for emissions inventories as well as for attainment, five percent annual emission reductions, reasonable further progress and milestones, and contingency measures, and to disapprove the 2010 motor vehicle emission budget in the 189(d) plan as not meeting the requirements of CAA section 176(c) and 40 CFR 93.118(e)(4). EPA also proposed a limited approval and limited disapproval of State regulations for the control of PM–10 from agricultural sources. Finally, EPA proposed to approve various provisions of State statutes relating to the control of PM–10 emissions in the Maricopa area.

The September 9, 2010 proposed rule provided a 30-day public comment period ending on October 12, 2010. In response to a request for an extension of the comment period from Benjamin H. Grumbles, Director, Arizona Department of Environmental Quality, and Dennis Smith, Executive Director, Maricopa Association of Governments, submitted by letter dated October 4, 2010, EPA is extending the comment period to October 20, 2010.

Dated: October 7, 2010.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2010–26019 Filed 10–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9213–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Denver Radium Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule, extension of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 issued a Notice of Intent to Delete portions of the Denver Radium Superfund Site from the National Priorities List (NPL) on September 9, 2010 (75 FR 54779). The portions proposed for deletion are each of the 11 operable units at the Denver Radium Site, located in the City and County of Denver, Colorado. Groundwater contamination associated with Operable Unit 8 will remain on the NPL. To ensure that everyone has an opportunity to comment, EPA is extending the public comment period through November 1, 2010.

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), have determined that all appropriate response actions under CERCLA, other than operation, maintenance and five-year reviews have been completed.

This rationale for deleting the 11 operable units of the Denver Radium Superfund Site has not changed. The **Federal Register** notice for the proposed deletion (75 FR 54779) discusses this rationale in detail.

DATES: Comments concerning the proposed partial deletion may be submitted to EPA on or before November 5, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: dalton.john@epa.gov.*
- *Fax:* 303–312–7110.
- *Mail:* Mr. John Dalton, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

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:

—EPA's Region 8 Superfund Records Center, 1595 Wynkoop Street, Denver, Colorado 80202–2466. Hours: 8 a.m. to 4 p.m. by appointment (call 303–312–6473), Monday through Friday, excluding legal holidays; and the

—Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, CO 80246 Hours: M–F, 8 a.m. to 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. John Dalton, Community Involvement Coordinator (8OC), U.S. Environmental Protection Agency, Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129; *telephone number:* 1–800–227–8917 or 303–312–6633; *fax number:* 303–312–7110; *e-mail address: dalton.john.@epa.gov.*

Dated: October 7, 2010.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2010–25902 Filed 10–13–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 75, No. 198
Thursday, October 14, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Research Data Archive Use Tracking

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the currently approved information collection, Research Data Archive Use Tracking.

DATES: Comments must be received in writing on or before December 13, 2010 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to USDA Forest Service, Dave Rugg, 1 Gifford Pinchot Drive, Madison, WI 53726–2366. Comments also may be submitted via e-mail to: *drugg@fs.fed.us.*

The public may inspect comments received at Forest Service—Forest Products Laboratory, 1 Gifford Pinchot Drive, Madison, WI, during normal business hours. Visitors are encouraged to call ahead to 608–231–9234 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Dave Rugg, Forest Service, Northern Research Station, 608–231–9234. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Research Data Archive Use Tracking.

OMB Number: 0596–0210.

Expiration Date of Approval: 04/30/2011.

Type of Request: Extension with no Revision.

Abstract: The Forest Service Research and Development (FS R&D) group has created a data archive to store and disseminate data collected in the course of its scientific research. Preparing data sets for the archive requires significant effort from researchers. The Forest Service has an obligation to encourage ethical use of archived FS R&D data sets and needs to know how others are using the archived data sets. This information assists FS R&D personnel in evaluating the research program. Information about the use of the products of a scientist's research is of significant importance in scientist performance evaluations.

When a member of the public requests a copy of a data set, FS R&D will collect the following information: Name; affiliation; contact information (including e-mail address); Statement of Intended Use; and Data Use Agreement. The Data Use Agreement and associated information collection closely follow the data access structure used by the National Science Foundation's Long Term Ecological Research network. FS R&D managers believe that this structure provides a sound balance between meeting obligations to its scientific staff and ease-of-access by the research community. The Statement of Intended Use will not determine access to a particular data set. A form at the archive web site will collect the information and the data set author will use the Data Use Agreements to describe the impact of research accomplishments prior to performance appraisals.

The collection of Data Use Agreements will be evaluated by the data archiving program to identify opportunities for improving the archive's function and offerings. The FS R&D communications office will use the agreements to assist in assessing the effectiveness of FS R&D research and technology transfer.

The FS R&D data archive is a new activity and participation is voluntary. This information collection is a critical component in the campaign to encourage Forest Service scientists to deposit their research data in the archive system. Sharing research data is very useful to the broader research community and sharing of well documented FS R&D data sets via the archive will be impossible without this information collection.

Estimate of Annual Burden: 10–15 minutes per respondent.

Type of Respondents: Scientists, particularly in fields studying natural resources; resource specialists in nonprofits and other government agencies.

Estimated Annual Number of Respondents: 200.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 50 hours.

Comment Is Invited: Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of 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 request toward Office of Management and Budget approval.

Dated: October 7, 2010.

Carlos Rodriguez-Franco,

Acting Deputy Chief, Research and Development.

[FR Doc. 2010–25861 Filed 10–13–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Apalachicola National Forest; Florida; City of Tallahassee 230kV Southwestern Transmission Line

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Forest Service, Apalachicola National Forest intends to prepare an environmental impact statement under a 3rd party agreement with the City of Tallahassee, Florida to

issue a special use authorization for the construction, occupancy and use of national forest system land for a 230kV electric transmission line. The addition of an east-west 230kV transmission line would connect the Hopkins—Crawfordville 230kV transmission line south of the Tallahassee Regional Airport (near the intersection of Springhill and Bice Roads), with the existing Substation BP–5 (southeast of the Capital Circle S.W./Woodville Highway intersection). The proposed transmission line would be approximately 8 miles long with approximately 6.4 miles located within the Apalachicola National Forest. The transmission line would parallel the existing Florida Gas Transmission Company's natural gas lines from the Hopkins—Crawfordville line until the forest boundary south of Substation BP–5. Once off the forest it would parallel an existing 115kV electric transmission line to its terminus at Substation BP–5.

DATES: Comments concerning the scope of the analysis must be received by November 19, 2010 in order to be considered in the Draft Environmental Impact Statement. A Draft Environmental Impact Statement is expected in April 2011. A Final Environmental Impact Statement is expected in October 2011. A Public Workshop will be held in Tallahassee, Florida on October 28, 2010.

ADDRESSES: Send written comments to Susan Jeheber-Matthews, Forest Supervisor, National Forests in Florida, 325 John Knox Road Suite F–100, Tallahassee, FL 32303. Comments may also be sent via e-mail to *comments-southern-florida@fs.fed.us*., or via facsimile to (850) 523–8505.

FOR FURTHER INFORMATION CONTACT: Harold Shenk, U.S. Forest Service, 57 Taff Drive, Crawfordville, FL 32327. Telephone; (850) 926–3561.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The North American Electric Reliability Corporation (NERC) is the electric reliability organization certified by the Federal Energy Regulatory Commission (FERC) to develop and enforce Reliability Standards for the bulk power system. NERC Transmission Planning Standards (TPL Standards 001–004) identify the mandatory planning standards that electric utilities must follow to ensure that reliable systems are developed that meet specified performance requirements.

The City conducts annual studies to evaluate the reliability of the bulk transmission system under a variety of contingencies that ensure the system meets the NERC standards. Recent studies have identified that the existing electric transmission network needs to be modified to ensure continued compliance with the NERC reliability planning standards.

Absent system improvements, the reliable delivery of power from the City's generating facilities and imported power via ties with other utilities to all customers cannot be ensured in the future under certain contingencies. The loss of multiple transmission lines due to a single event on a common right of way would cause other lines on the system to be overloaded. An additional electric transmission delivery path from east to west was identified as the means by which the City can maintain the ability to supply projected customer demands and wholesale transmission services into the future as required by the NERC Standards.

The proposed 230kV Transmission Line would provide enhanced system benefits that will meet the NERC mandated requirements and will improve system performance to the general public. These benefits include: (1) Improved system reliability over a broader range of contingencies & longer duration as a result of providing an additional delivery path from generation sources and interconnections with other utilities to customers; (2) improved power transfer (east to west) as a result of the reduced losses associated with higher voltage transmission lines; and (3) address reliability concerns regarding the ability to supply future customer demands should one or more of the current east to west delivery paths become unavailable due to an equipment fault or failure.

Proposed Action

The Proposed Action is to issue a special use authorization for the construction, occupancy and use of a 230kV electric transmission line on approximately 6.4 miles of national forest system lands on the Apalachicola National Forest. The proposed electric transmission line would connect the Hopkins-Crawfordville 230kV line south of the Tallahassee Regional Airport (near the intersection of Springhill and Bice Roads), with the existing Substation BP–5 (southeast of the Capital Circle SW. and Woodville Highway intersection). The proposed transmission line would be approximately 8 miles long with approximately 6.4 miles located within the Apalachicola National Forest.

The proposed transmission line would be located adjacent to an existing utility corridor currently under a U.S. Forest Service Special Use Permit with the Florida Gas Transmission Company. The proposed transmission line would increase the existing 80 foot-wide Florida Gas corridor by an additional 60 feet. The additional corridor would occur within the temporary work space previously created by the Florida Gas Transmission Company and documented in the January 11, 2010 Record of Decision, Special Use Permit, Florida Gas Transmission Company, Phase VIII Expansion Project. The Proposed Action would also include the development of a new tap point on the Hopkins-Crawfordville line.

Possible Alternatives

Two additional routes were evaluated during development of the proposed transmission line. The first alternative route follows Springhill Road, passes through a smaller undisturbed area of the Apalachicola National Forest, and then parallels Capital Circle SW. The second route, consisting of a minor deviation of the first route, would follow Springhill Road all the way to Capital Circle SW., reducing impact to the national forest, but would not meet FAA safety regulations (FAR Part 77) for structure height near the runway at the Tallahassee Regional Airport.

Responsible Official

Susan Jeheber-Matthews, Forest Supervisor, 325 John Knox Road, Suite F–100, Tallahassee, FL 32303.

Nature of Decision To Be Made

The Forest Service will decide whether or not to issue a special use authorization for the construction, occupancy and use of a 230kV electric transmission line on approximately 6.4 miles of national forest system lands on the Apalachicola National Forest and conditions there of.

Permits or Licenses Required

Leon County Environmental Management Permit.

Florida Department of Environmental Protection, National Discharge Elimination permit.

Scoping Process

This notice of intent initiates the scoping process, which will guide the development of the environmental impact statement. A Public Workshop will be held in Tallahassee, Florida on October 28, 2010 (Woodville Elementary

School Cafeteria, 9373 Woodville Highway, 5–7 p.m.) to provide citizens an opportunity to learn about the project and to provide comments. Letters requesting comments on the proposed action will be mailed to the public involvement mailing list for the Apalachicola National Forest and local citizens that may be affected by the project.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the Agency with the ability to provide the respondent with subsequent environmental documents.

Dated: October 7, 2010.

Susan Jeheber-Matthews,

Forest Supervisor.

[FR Doc. 2010–25825 Filed 10–13–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yavapai County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Yavapai County Resource Advisory Committee (RAC) will meet in Prescott, Arizona. The committee is meeting as authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) and in compliance with the Federal Advisory Committee Act. The purpose of the meeting is to discuss RAC Timeline, Grants and Agreements Workshop, Discuss Financial Status, and Project Evaluation Criteria.

DATES: The meeting will be held October 29, 2010; 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Prescott Fire Center, 2400 Melville Dr., Prescott, AZ 86301.

FOR FURTHER INFORMATION CONTACT: Debbie Maneely, RAC Coordinator, Prescott National Forest, 344 S. Cortez, Prescott, AZ 86301; (928) 443–8130 or *dmaneely@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Approve September meeting minutes; (2) discuss possible Grants and Agreements workshops; (3) financial reporting; (4) RAC timeline; (5) create project evaluation criteria; (6) followup on bin items from last meeting; (7) next meeting agenda, location, and date.

Dated: October 7, 2010.

Alan Quan,

Forest Supervisor.

[FR Doc. 2010–25822 Filed 10–13–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

RIN 0524–AA43

Solicitation of Input From Stakeholders Regarding Administration of the Veterinary Medicine Loan Repayment Program (VMLRP)

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice of public meeting and request for stakeholder input.

SUMMARY: The National Institute of Food and Agriculture (NIFA) is soliciting stakeholder input on the recent implementation of the Veterinary Medicine Loan Repayment Program (VMLRP) authorized under section 1415A of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3151a). The purpose of this program is for the U.S. Department of Agriculture (USDA) to enter into agreements with veterinarians under which the veterinarians agree to provide, for a specific period of time as identified in the agreement, veterinary services in veterinarian shortage situations. As part of the stakeholder input process, NIFA is conducting a public meeting to solicit comments regarding the processes developed and implemented for the first application cycle that concluded with the first group of awards under this program in September 2010. Input collected will be used to modify and improve processes for subsequent calls of shortage situation nominations and request for applications.

DATES: The meeting will be held on Monday, November 8, 2010, from 9 a.m. to 3:30 p.m. All comments must be received by close of business Monday, November 15, 2010, to be considered.

ADDRESSES: The meeting will be held in room 1410 A–B–C–D of the Waterfront Centre Building, National Institute of Food and Agriculture, United States Department of Agriculture, 800 9th St., SW., Washington, DC 20024. Meeting participants will need to provide photo identification to be admitted to the building. Please allow sufficient time to go through security. You may submit comments, identified by NIFA–2011–0001, by any of the following methods:

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

E-mail: vmlrp@nifa.usda.gov. Include NIFA–2011–0001 in the subject line of the message.

Fax: 202–720–6486.

Mail: Paper, disk or CD–ROM submissions should be submitted to VMLRP, Plant and Animal Systems (PAS) Unit, National Institute of Food and Agriculture, U.S. Department of Agriculture; STOP 2220, 1400 Independence Avenue, SW., Washington, DC 20250–2220.

Hand Delivery/Courier: VMLRP; Plant and Animal Systems (PAS) Unit, National Institute of Food and Agriculture, U.S. Department of Agriculture, Room 3153, Waterfront Centre, 800 9th Street, SW., Washington, DC 20024.

Instructions: All submissions received must include the agency name and NIFA–2011–0001. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Stephens, (202) 401–6438, or *lstephens@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Additional Meeting and Comment Procedures

Because of the diversity of subjects, and to aid participants in scheduling their attendance, the following schedule is anticipated for the November 8, 2010, meeting:

9–9:30 a.m.— Introduction and Background of VMLRP.

9:30–12 p.m.—Identification and prioritization of veterinarian shortage situations.

1–3:30 p.m.—Administration of the VMLRP, including application forms; timing and length of VMLRP application period; application prioritization and review; execution of VMLRP agreements; agreement terms and conditions; and monitoring and oversight of VMLRP agreements.

Persons wishing to present oral comments at this meeting are requested

to pre-register by contacting Ms. Lisa Stephens at (202) 401–6438, by fax at (202) 401–6156 or by e-mail to *lstephens@nifa.usda.gov.* Participants may reserve one 5-minute comment period per topic area, and should indicate the topic area(s) for which they are registering (*i.e.,* identification of veterinarian shortage situations and/or administration of the VMLRP). For any participant who may require only one 5-minute period to fully present testimony regarding both topic areas, the participant should indicate this intention and may reserve their 5-minute comment period under one of the two topic areas. More time may be available, depending on the number of people wishing to make a presentation and the time needed for questions following presentations. Reservations will be confirmed on a first-come, first-served basis. All other attendees may register at the meeting. Written comments may also be submitted for the record at the meeting. All comments must be received by close of business Monday, November 15, 2010, to be considered. All comments and the official transcript of the meeting, when they become available, may be reviewed on the NIFA Web site for six months. Participants who require a sign language interpreter or other special accommodations should contact Ms. Stephens as directed above.

Background and Purpose

Note: On October 1, 2009, the Cooperative State Research, Education, and Extension Service (CSREES) became the National Institute of Food and Agriculture (NIFA) as mandated by the Food, Conservation, and Energy Act of 2008 (FCEA), section 7511(f).

In December 2003, the National Veterinary Medical Service Act (NVMSA) was passed into law adding section 1415A to the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (NARETPA). This law established a new Veterinary Medicine Loan Repayment Program (7 U.S.C. 3151a) authorizing the Secretary of Agriculture (Secretary) to carry out a program of entering into agreements with veterinarians under which they agree to provide veterinary services in veterinarian shortage situations. In November 2005, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97), appropriated $495,000 to implement the Veterinary Medicine Loan Repayment Program (VMLRP) and represented the first time funds had been appropriated for this program. In February 2007, the Revised Continuing Appropriations Resolution, 2007 (Pub. L. 110–5), appropriated an additional $495,000 for support of the program, and in December 2007, the Consolidated Appropriations Act, 2008 (Pub. L. 110–161), appropriated an additional $868,875 for support of this program, and on March 11, 2009, the Omnibus Appropriations Act, 2009 (Pub. L. 111–8) was enacted, providing an additional $2,950,000, for the VMLRP. In October 2009, the President signed into law, Pub. L. 111–80, Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2010, which appropriated $4,800,000 for the VMLRP. Consequently, there was a cumulative total of approximately $9.6 million available for NIFA to administer this program when NIFA rolled out its first Request for Applications for this program on April 30, 2010.

The first VMLRP application period resulted in 260 applications in which 62 applications were selected for loan repayment awards totaling $5,988,086.

Section 7105 of the FCEA amended section 1415A to revise the determination of veterinarian shortage situations to consider (1) geographical areas that the Secretary determines have a shortage of veterinarians; and (2) areas of veterinary practice that the Secretary determines have a shortage of veterinarians, such as food animal medicine, public health, epidemiology, and food safety. This section also added that priority should be given to agreements with veterinarians for the practice of food animal medicine in veterinarian shortage situations.

NARETPA section 1415A requires the Secretary, when determining the amount of repayment for a year of service by a veterinarian, to consider the ability of USDA to maximize the number of agreements from the amounts appropriated and to provide an incentive to serve in veterinary service shortage areas with the greatest need. This section also provides that loan repayments may consist of payments of the principal and interest on government and commercial loans received by the individual for the attendance of the individual at an accredited college of veterinary medicine resulting in a degree of Doctor of Veterinary Medicine or the equivalent. This program is not authorized to provide repayments for any government or commercial loans incurred during the pursuit of another degree, such as an associate or bachelor degree. Loans eligible for repayment include educational loans made for one or more of the following: Loans for tuition expenses; other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by the individual; and reasonable living expenses as determined by the Secretary. In addition, the Secretary is directed to make such additional payments to participants as the Secretary determines appropriate for the purpose of providing reimbursements to participants for individual tax liability resulting from participation in this program. The Secretary delegated the authority to carry out this program to NIFA.

NIFA is holding a public meeting to obtain comments to use in improving the administration of the VMLRP. The meeting is open to the public. Written comments and suggestions on issues that may be considered during the meeting may be submitted to the NIFA Docket Clerk at the address above.

Done in Washington, DC, this 7th day of October 2010.

Meryl Broussard,

Deputy Director, National Institute of Food and Agriculture.

[FR Doc. 2010–25827 Filed 10–13–10; 8:45 am]

BILLING CODE 3410–22–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

AGENCY: United States Commission on Civil Rights.

ACTION: Notice of meeting.

DATE AND TIME: Friday, October 22, 2010; 9:30 a.m. EDT.

PLACE: 624 9th St., NW., Room 540, Washington, DC 20425.

Meeting Agenda

This meeting is open to the public.

I. Approval of Agenda.

II. Program Planning.

- Approval of New Black Panther Party Enforcement Report.
- Consideration of Findings and Recommendations for Briefing Report on English-Only in the Workplace.
- Consideration of Policy on Commissioner Statements and Rebuttals.
- Update on Sex Discrimination in Liberal Arts College Admissions—Some of the discussion of this agenda item may be held in closed session.
- Update on Clearinghouse Project.

III. State Advisory Committee Issues.

- Kentucky SAC.
- Maryland SAC.
- Vermont SAC.

IV. Staff Director's Report.

V. Announcements.
VI. Approval of Minutes of October 8 Meeting.
VII. Adjourn.

CONTACT PERSON FOR FURTHER INFORMATION: Lenore Ostrowsky, Acting Chief, Public Affairs Unit (202) 376–8591. *TDD:* (202) 376–8116.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Pamela Dunston at least seven days prior to the meeting at 202–376–8105. *TDD:* (202) 376–8116.

Dated: October 12, 2010.

David Blackwood,

General Counsel.

[FR Doc. 2010–26048 Filed 10–12–10; 4:15 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Interim Capital Construction Fund Agreement and Certificate Family of Forms.

OMB Control Number: 0648–0090.

Form Number(s): 88–14.

Type of Request: Regular submission (renewal of a currently approved information collection).

Number of Respondents: 500.

Average Hours per Response: Agreement and application, 30 minutes, Schedules A and B, and certificate, 1 hour.

Burden Hours: 2,500.

Needs and Uses: The respondents will be commercial fishing industry individuals, partnerships, and corporations which are applying for or have entered into Capital Construction Fund agreements with the Secretary of Commerce for allowing deferral of Federal taxation on fishing vessel income deposited into the fund for use in the acquisition, construction, or reconstruction of fishing vessels. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The information collected from agreement holders is used to determine their eligibility to participate in the Capital Construction Fund Program pursuant to 50 CFR part 259.

At the completion of construction/reconstruction, a certificate stating completion and costs must be submitted.

Affected Public: Business or other for-profit organizations.

Frequency: Annually and on occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: October 7, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–25788 Filed 10–13–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marine Mammal Stranding Reports/Marine Mammal Rehabilitation Disposition Report.

OMB Control Number: 0648–0178.

Form Number(s): 89–864, 89–878.

Type of Request: Regular submission (renewal of a currently approved information collection).

Number of Respondents: 400.

Average Hours per Response: 30 minutes.

Burden Hours: 2,400.

Needs and Uses: This notice is for renewal of this information collection. Under the Marine Mammal Protection Act (MMPA) Section 402, the Secretary of Commerce is responsible for collecting information on strandings, which the Secretary will compile and analyze, by region, to monitor species, numbers, conditions of marine mammals stranded, and causes of their illnesses or deaths. The Secretary is also responsible for collection of information on other life history and reference level data, including marine mammal tissue analyses, that would allow comparison of the causes of illness and deaths in stranded marine mammals with physical, chemical, and biological environmental parameters. Responsibility for collection and analysis of the information has been delegated to the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS).

A small fraction of marine mammals are alive when stranded and are deemed appropriate candidates for rehabilitation and a Marine Mammal Rehabilitation Disposition Report is completed for each one. This report provides NMFS with information on the disposition of animals brought in for rehabilitation, types of disease and other health related issues upon admission, types of and response to medical treatment, and the number of animals released. This information assists NMFS in tracking marine mammals that are transferred to captive display facilities following a determination of non-releasability and in the monitoring of rehabilitation facilities and release protocols.

Affected Public: State, local, and tribal government; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: OIRA_Submission@omb.eop.gov.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov.*

Dated: October 7, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–25789 Filed 10–13–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ64

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee, on November 2–3, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This meeting will be held on Tuesday, November 2 at 10 a.m. and Wednesday, November 3, 2010 at 8:30 a.m.

ADDRESSES: The meeting will be held at the Providence Biltmore, 11 Dorrance Street, Providence, RI 02903; *telephone:* (401) 421–0700; *fax:* (401) 455–3050.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Tuesday, November 2, 2010

The Scientific and Statistical Committee (SSC) will discuss SSC business concerning the SSC's calendar for 2011, committee activities including the National SSC Workshop, and any other outstanding SSC business. The Committee will also develop an Acceptable Biological Catch (ABC) recommendation for Gulf of Maine winter flounder based on recent analyses; develop an ABC recommendation for Georges Bank yellowtail flounder to comport with the rebuilding strategy proposed at the September Council meeting as well as finalize the annually compiled list of five-year Council research recommendations.

Wednesday, November 3, 2010

The SSC will Review the Ecosystem-Based Fishery Management draft policy paper and further consider the control rules currently used to set Acceptable Biological Catch (ABC) for all/most NEFMC-managed stocks and discuss how to best coordinate with the Council relative to the development of the control rules.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 8, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–25889 Filed 10–13–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ65

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a joint meeting of its Ecosystem Scientific and Statistical Committee & Socioeconomic Panel.

DATES: The Ecosystem Scientific and Statistical Committee & Socioeconomic Panel meeting will begin at 9 a.m. on Wednesday, November 3, 2010 and conclude by 4 p.m. on Thursday, November 4, 2010.

ADDRESSES: The meeting will be held at the Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Karen Burns, Ecosystem Management Specialist, Gulf of Mexico Fishery Management Council; *telephone:* (813) 348–1630.

SUPPLEMENTARY INFORMATION: On the first day, the Ecosystem Scientific and Statistical Committee and Socioeconomic Panel will discuss ways in which socioeconomic data can be integrated into fisheries science in moving toward ecosystem based fishery management. Various conceptual frameworks and models will be presented. The second day will be devoted to identifying impacts of the Deep Horizon oil spill that will directly affect Gulf Council fishery management decisions.

Copies of the agendas and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org.* The ftp server can be accessed from the Gulf Council's home page. Once on the ftp server, click on the KB folder and then proceed to the link to the ECO–SSC & SEP folder. Click on the SSC & SEP meeting 2010–11. The meeting agenda, information on the presenters, the proposal for the joint Ecosystem Scientific and Statistical Committee and the Socioeconomic Panel joint workshop for next year and additional material are available on the site.

Although other non-emergency issues not on the agendas may come before the Scientific and Statistical Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the and Statistical Committee will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (*see* **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: October 8, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–25890 Filed 10–13–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ63

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Committee, on November 2, 2010, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, November 2, 2010 at 9 a.m.

ADDRESSES: The meeting will be held at the Providence Biltmore Hotel, 11 Dorrance Street, Providence, RI 02903; *telephone:* (401) 421–0700; *fax:* (401) 455–3050.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; *telephone:* (978) 465–0492.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council's (NEFMC) Scientific and Statistical Committee (SSC) has recommended revisions to the monkfish biomass reference points and the Acceptable Biological Catch (ABC) limits. For the Northern Management Area (NMS), the recommended ABC is below the Annual Catch Target (ACT) recently submitted by the New England and Mid-Atlantic Councils to the Secretary of Commerce in Amendment 5. In response, the NEFMC has initiated Framework 7 to adopt a revised NMA ACT and associated specifications of days-at-sea (DAS) allocations and trip limits. At this meeting, the Committee will review the Plan Development Team's analysis of alternative ACTs and specifications prior to the initial meeting of the NEFMC on Framework 7. The New England and Mid-Atlantic Councils have also declared their intent to consider catch shares management for the monkfish fishery and to initiate Amendment 6 for that purpose. At this meeting, the Committee will review a draft information package/scoping document prepared by the staff to be used in the initial public meetings on Amendment 6 later this fall.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

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

Dated: October 8, 2010.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–25888 Filed 10–13–10; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2010–0077]

Performance Review Board (PRB)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Director, Human Capital Management, Office of Human Resources, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Karen Karlinchak at (571) 272–8717.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Sharon R. Barner, Chair, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office.

Patricia M. Richter, Chief Administrative Officer, United States Patent and Trademark Office.

Robert L. Stoll, Commissioner for Patents, United States Patent and Trademark Office.

Lynne G. Beresford, Commissioner for Trademarks, United States Patent and Trademark Office.

Anthony P. Scardino, Chief Financial Officer, United States Patent and Trademark Office.

John B. Owens II, Chief Information Officer, United States Patent and Trademark Office.

Bernard J. Knight Jr., General Counsel, United States Patent and Trademark Office.

Alternates

Deborah S. Cohn, Deputy Commissioner for Trademark Operations, United States Patent and Trademark Office.

Margaret A. Focarino, Deputy Commissioner for Patent Operations, United States Patent and Trademark Office.

Dated: October 6, 2010.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–25860 Filed 10–13–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 101004488–0488–01]

Solicitation of Applications for the Public Works, Economic Adjustment Assistance, and Global Climate Change Mitigation Incentive Fund (GCCMIF) Economic Development Assistance Programs

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Notice and request for applications.

SUMMARY: This notice announces new application submission and review procedures for FY 2011 funding under EDA's (i) Public Works and Economic Development Facilities Program; (ii)

Economic Adjustment Assistance Program; and (iii) Global Climate Change Mitigation Incentive Fund (GCCMIF) Program. To enhance the competitiveness, transparency, and efficiency of EDA's grants-making process and ensure timely responsiveness to applicants, in FY 2011 EDA will move to a funding cycle system under which applications submitted under these programs will be considered for funding roughly once a quarter. Beginning on October 14, 2010, applications will still be accepted on a continuing basis but must be received by the deadlines set out below in order to be considered for funding during a particular cycle. Eligible applicants have the option of receiving preliminary feedback on an application's technical and competitive merits by submitting the application for an optional preliminary review as described in section V.A. of the Federal Funding Opportunity (FFO) announcement, which is posted on EDA's Web site at *http://www.eda.gov/InvestmentsGrants/Grant%20Process.xml.* EDA will provide such feedback not later than 15 business days after EDA's receipt of the application, and applicants will have the opportunity to revise and/or supplement the application as necessary or submit a new application by the funding cycle deadline or in time for consideration in a subsequent funding cycle. Applicants that elect to receive such feedback should take care to submit the application sufficiently in advance of a funding cycle deadline so that EDA can provide the feedback and the applicant can make any changes and/or provide additional documentation or submit a new application by the funding cycle deadline. EDA will not select projects for funding until after the funding cycle deadline has passed. Applications may be submitted electronically in accordance with the instructions provided at *http://www.grants.gov* or in hard copy to the applicable regional office. Please see sections IV. and V. of the FFO for complete information on the new application submission and processing procedures.

Deadlines: Beginning in FY 2011, EDA will accept and review applications submitted under its Public Works, Economic Adjustment Assistance, and GCCMIF Programs in funding cycles. To be considered during a particular funding cycle, complete applications must be accepted and validated by *http://www.grants.gov* or delivered in hard copy to the applicable regional office listed in section IX. of the FFO with a postmark or courier service's time and date stamp on or before 5 p.m. local time in the applicable regional office on the deadline date for the funding cycles listed below. For FY 2011, the funding cycle deadlines are as follows:

- December 15 for funding cycle 1;
- March 10 for funding cycle 2;
- June 10 for funding cycle 3; and
- September 15 for funding cycle 1 of FY 2012.

Please note that applications for financial assistance submitted under EDA's Planning, Partnership Planning, Local Technical Assistance, University Center, and Research and National Technical Assistance Programs are not subject to the deadlines described above, and requirements for these programs will be published in separate FFO announcements. In addition, applications for any supplemental appropriations that EDA receives will not be subject to the deadlines published in this notice, and EDA will publish a separate FFO for any such appropriations. Please contact the applicable regional office listed in section IX. of the FFO for additional information on submitting an application under any of EDA's programs.

ADDRESSES:

Obtaining Application Packages. An eligible applicant may obtain the appropriate application package electronically at *http://www.grants.gov.* All components of the appropriate application package may be accessed and downloaded (in a screen-fillable format) at *http://www.grants.gov/applicants/apply_for_grants.jsp.* Applicants may access the application package 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. Alternatively, an applicant eligible for assistance under this notice may request a paper (hard copy) application package by contacting the applicable EDA regional office listed below under "Addresses and Telephone Numbers for EDA's Regional Offices" and in section IX. of the FFO.

Application Submission Formats: Applications may be submitted either electronically in accordance with the procedures provided at *http://www.grants.gov;* or in paper (hard copy) format to the applicable regional office address provided below. The content of applications is the same for paper submissions as it is for electronic submissions. EDA will not accept facsimile or email transmissions of applications.

Electronic Submissions: EDA strongly encourages electronic submissions of applications through *http://www.grants.gov.* Applications must be successfully validated and time-stamped by *http://www.grants.gov* no later than 5 p.m. local time for the applicable regional office on the funding cycle deadline listed above under "DEADLINES" and in section V.C. of the FFO.

Applicants are strongly encouraged to start early and not to wait until an approaching funding cycle deadline before logging in, registering, reviewing the application instructions, and applying. Applicants must register (which can take between three to five business days or as long as four weeks if all steps are not completed correctly), designate one or more Authorized Organizational Representatives (AOR), ensure that an AOR submits the application, and 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, which is open 24 hours a day, seven days a week, 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 the Contact Center via telephone at 1–800–518–4726. In addition, please read carefully section V.H. of the FFO for complete information on submitting electronically via *http://www.grants.gov.*

Paper Submissions: An applicant also has the option of submitting a completed paper (hard copy) application to the applicable regional office listed in section IX. of the FFO. Applications must be delivered to the applicable regional office with a postmark or courier service's time and date stamp on or before 5 p.m. local time in the applicable regional office on the applicable funding cycle deadline. The applicant must submit one original and two copies of the completed application package via postal mail or express courier to the applicable regional office. Department of Commerce (DOC) mail security measures may delay receipt of United

States Postal Service mail for up to two weeks. Therefore, applicants that submit paper applications are advised to use guaranteed overnight delivery services.

Addresses and Telephone Numbers for EDA's Regional Offices:

Applicants in Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee, may submit paper submissions to: Economic Development Administration, Atlanta Regional Office, 401 West Peachtree Street, NW., Suite 1820, Atlanta, Georgia 30308, *Telephone:* (404) 730–3002, Fax: (404) 730–3025.

Applicants in Arkansas, Louisiana, New Mexico, Oklahoma, and Texas, may submit paper submissions to: Economic Development Administration, Austin Regional Office, 504 Lavaca, Suite 1100, Austin, Texas 78701–2858, *Telephone:* (512) 381–8144, Fax: (512) 381–8177.

Applicants in Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin, and Muscatine and Scott counties, Iowa, may submit paper submissions to: Economic Development Administration, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606, *Telephone:* (312) 353–7706, Fax: (312) 353–8575.

Applicants in Colorado, Iowa (excluding Muscatine and Scott counties), Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming, may submit paper submissions to: Economic Development Administration, Denver Regional Office, 410 17th Street, Suite 250, Denver, Colorado 80202, *Telephone:* (303) 844–4714, Fax: (303) 844–3968.

Applicants in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, U.S. Virgin Islands, Virginia, and West Virginia, may submit paper submissions to: Economic Development Administration, Philadelphia Regional Office, Curtis Center, 601 Walnut Street, Suite 140 South, Philadelphia, Pennsylvania 19106, *Telephone:* (215) 597–4603, Fax: (215) 597–1063.

Applicants in Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Marshall Islands, Micronesia, Nevada, Northern Mariana Islands, Oregon, Republic of Palau, and Washington, may submit paper submissions to: Economic Development Administration, Seattle Regional Office, Jackson Federal Building, Room 1890, 915 Second Avenue, Seattle, Washington 98174, *Telephone:* (206) 220–7660, Fax: (206) 220–7669.

SUPPLEMENTARY INFORMATION: *EDA's New Application Submission and Review Procedures.* This notice announces EDA's new application submission and review procedures for three of the agency's Economic Development Assistance Programs authorized under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. 3121 *et seq.*) (PWEDA). These programs are the (i) Public Works and Economic Development Facilities Program; (ii) Economic Adjustment Assistance Program; and (iii) Global Climate Change Mitigation Incentive Fund (GCCMIF) Program. EDA will publish separate FFO announcements for its other Economic Development Assistance Programs: Planning, Partnership Planning, University Center, and Research and National Technical Assistance.

This notice introduces the concept of funding cycles in the context of EDA's grants-making process for the three programs. In FY 2011, EDA will discontinue its process of processing projects on a continuing basis and will implement a new process under which the agency will consider applications under its Public Works, Economic Adjustment Assistance, and GCCMIF Programs at a set time in roughly quarterly funding cycles. This new process will enhance the competitiveness, transparency, and efficiency of EDA's grants-making process, and it will also allow EDA to be more responsive to applicants. Applicants will receive an answer from EDA sooner and will be able to better plan for their economic development needs.

EDA will continue to accept applications on a continuing basis, but if an applicant wishes to be considered for a particular funding cycle, EDA must receive a complete application as set out in section V.B. of the FFO by the deadlines announced above under "DEADLINES" and in section V.C. of the FFO.

EDA will evaluate all applications based on the criteria set out below under "Evaluation Criteria" and in section IV.A. of the FFO. Please read the following sections carefully for complete information on EDA's programs and the new application procedures that will take effect in FY 2011.

Note: In instances of extremely urgent economic distress, EDA reserves the flexibility to make an award outside of the funding cycles described in this notice. An example of urgent economic distress might be helping a community respond to the sudden loss of a major employer by using Economic Adjustment Assistance to prepare a recovery strategy. Any such awards will be processed in accord with the evaluation criteria set out below under "Evaluation Criteria" and in section IV.A. of the FFO.

What are the purposes of EDA's Economic Development Assistance Programs? EDA's mission is to lead the Federal economic development agenda by promoting innovation, collaboration, and competitiveness, preparing American regions for growth and success in the worldwide economy. In implementing this mission pursuant to PWEDA, EDA advances economic growth by assisting communities and regions experiencing chronic high unemployment and low per capita income to foster an environment conducive to economic growth and job creation.

EDA's Economic Development Assistance Programs are designed to provide distressed communities and regions with comprehensive and flexible solutions to a wide variety of economic impacts. The programs are designed to support local and regional economic development efforts to establish a foundation for durable regional economies throughout the United States. This foundation builds upon two key economic drivers—innovation and regional collaboration. Innovation is the key to global competitiveness, the creation of new and better jobs, a resilient economy, and the attainment of national economic goals. Regional collaboration is essential for economic recovery because regions are the centers of competition in the new global economy, and those regions that work together will fare better than those that do not. When innovation and collaboration are infused into America's communities and regions, they create and retain higher wage and sustainable jobs, leverage the flow of private capital, encourage economic development, and strengthen America's ability to compete in the global marketplace. EDA encourages its rural and urban partners around the country to develop initiatives that advance new ideas and creative approaches to address rapidly evolving economic conditions. EDA's Economic Development Assistance Programs will help communities and regions understand their current economic situation, plan a way forward, and achieve their economic goals.

Under this notice, EDA publishes its application submission requirements and review procedures for three of the Economic Development Assistance Programs authorized under PWEDA: (i) Public Works and Economic Development Facilities; (ii) Economic

Adjustment Assistance; and (iii) GCCMIF.

What goals and objectives does EDA seek to advance with grants made under the Economic Development Assistance Programs? EDA encourages the submission of only those applications that will significantly benefit regions with economically distressed economies. Such distress may exist in a variety of forms, including high levels of unemployment, low income levels, large concentrations of low-income families, significant declines in per capita income, large numbers (or high rates) of business failures, sudden major layoffs or plant closures, trade impacts, military base closures or realignments, defense contractor reductions-in-force, natural or other major disasters, depletion of natural resources, reduced tax bases, or substantial loss of population because of the lack of employment opportunities. EDA's experience has shown that regional economic development to help alleviate these conditions is effected primarily through investments and decisions made by the private sector.

EDA encourages applicants to consider the energy and environmental implications of their activities. To the extent practicable, and dependent upon the project type and in consideration of the financial resources available, EDA expects recipients to use the best available strategies, technologies, and construction practices in order to minimize energy use and environmental impacts. Applicants are encouraged to ensure the project's consistency with the Climate Action Plan of the State in which the proposed project will be located, if applicable, and any applicable Federal, State, or local government's coastal climate change plan. The U.S. Environmental Protection Agency's Web site contains more information on State Climate Action Plans and can help determine if a particular State has one. *See http://www.epa.gov/statelocalclimate/index.html.*

EDA also encourages projects that advance the innovation economy and support the development of regional innovation clusters (RICs), which are broadly defined as geographic concentrations of firms and industries that do business with each other and have common needs for talent, technology, and infrastructure. The White House's National Economic Council's Web site has more information on the innovation economy at *http://www.whitehouse.gov/administration/eop/nec/StrategyforAmericanInnovation/.* More information on RICs may be found on EDA's Web site at *http://www.eda.gov/AboutEDA/RIC/.* Please also see section I.C. of the FFO for more information.

The program descriptions, eligibility information, application requirements, review and selection procedures, and evaluation criteria in this notice apply to EDA's FY 2011 Public Works, Economic Adjustment Assistance, and GCCMIF Programs. This announcement is being published in anticipation of the final availability of FY 2011 appropriations, to provide the economic development community with notice regarding EDA's new application procedures. EDA will publish separate announcements that detail the final amounts available in FY 2011 and any programmatic or procedural changes from this notice.

Statutory Authorities for EDA's Programs: The statutory authorities for the Public Works and Economic Development Facilities Program and the Economic Adjustment Assistance Program are sections 201 (42 U.S.C. 3141) and 209 (42 U.S.C. 3149) of PWEDA, respectively.

Applicant eligibility and program requirements are set forth in EDA's regulations (codified at 13 CFR chapter III) and the applicant must address these requirements. Please note that this notice supersedes the Economic Development Assistance Programs FFO dated June 22, 2009, and current EDA regulations on program objectives and priorities, application procedures, evaluation criteria, and selection procedures. EDA expects to update its regulations to reflect these changes in the near future. EDA's regulations and PWEDA are available at *http://www.eda.gov/InvestmentsGrants/Lawsreg.xml.*

What funding is available under this notice? As of October 14, 2010, the full amount of FY 2011 appropriations is not available and EDA is operating under the authority of the FY 2011 Continuing Resolution, Public Law 111–242, September 30, 2010. The FY 2010 award amounts are provided only for your information. EDA is operating under a continuing resolution that allocates a level of funding based on FY 2010 funding levels, but on a pro-rated basis, until the enactment of the FY 2011 appropriations. Assuming EDA receives FY 2011 appropriations of approximately the same level as in FY 2010, the following amounts may prove useful for planning purposes.

In FY 2010, the Consolidated Appropriations Act, 2010 (Pub. L. 111–117, 123 Stat. 3034 at 3114 (2009)) made $255,000,000 available for the Economic Development Assistance Programs authorized under PWEDA and for the Trade Adjustment Assistance for Firms Program authorized under the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*) in FY 2010. EDA expects funding levels for FY 2011 to be similar to that in FY 2010, however the final amounts will not be known until Congress passes the FY 2011 appropriations. When the full FY 2011 appropriations become available, EDA will publish a notice to announce the final FY 2011 funding levels for each program. The funding periods and funding amounts referenced in this notice are subject to the availability of funds at the time of award, as well as to DOC and EDA priorities at the time of award. Neither DOC nor EDA will be held responsible for application preparation costs. Publication of this notice does not obligate DOC or EDA to award any specific grant or cooperative agreement or to obligate all or any part of available funds.

The following sections provide more information on EDA's Economic Development Assistance Programs. Specific FY 2011 funding amounts for each program will be announced separately upon availability.

1. Public Works and Economic Development Facilities Program (CFDA No. 11.300; 13 CFR Part 305)

EDA will provide strategic Public Works investments to support the construction or rehabilitation of essential public infrastructure and facilities to help communities and regions leverage their resources and strengths to create new and better jobs, drive innovation, become centers of competition in the global economy, and ensure resilient economies. For example, EDA may provide funding to a consortium of District Organizations to support the construction of a technology center that provides laboratory, office, and manufacturing space and leverages the resources of local universities, entrepreneurial networks, and the District Organizations themselves to provide comprehensive assistance to technology-oriented businesses with significant growth potential.

EDA allocated $133,280,000 for the Public Works and Economic Development Facilities Program in FY 2010. The average size of a Public Works investment was approximately $1.7 million, though investments ranged in size from $500,000 to $2,000,000.

2. Economic Adjustment Assistance Program (CFDA No. 11.307; 13 CFR Part 307)

Through the Economic Adjustment Assistance Program, EDA provides a wide range of construction and non-construction assistance, including public works, technical assistance,

strategies, and revolving loan fund (RLF) projects, in regions experiencing severe economic dislocations that may occur suddenly or over time. This program is designed to respond flexibly to pressing economic recovery issues and is well suited to help address challenges faced by U.S. communities and regions. For example, EDA might provide funding to a university or community college to launch a Regional Innovation Cluster (RIC) strategy that supports or provides technical assistance to smaller manufacturers to promote the growth of varied industrial clusters, stem job losses in manufacturing businesses as a result of foreign competition, accelerate the commercialization of research, support high-growth entrepreneurship, and promote the successful diversification of the region's economy.

EDA will continue to consider applications from communities experiencing adverse economic changes due to base realignment and closures (BRAC) and Federally declared disasters when awarding assistance from FY 2011 Economic Adjustment Assistance Program funds. EDA will help American workers, businesses, and communities affected by military base closures or realignments; defense contractor reductions in force; Federally declared disasters; or economic deterioration due to other disasters, by providing assistance for planning, coordinating the use of Federal resources available to support economic development recovery, and developing regionally focused economic recovery and growth strategies.

EDA allocated $38,620,000 to the Economic Adjustment Assistance Program in FY 2010. The average size of an Economic Adjustment investment was approximately $550,000, though investments ranged from $100,000 to $1,250,000.

3. Global Climate Change Mitigation Incentive Fund

From amounts otherwise made available for the Economic Development Assistance Programs authorized under PWEDA, EDA generally allocates funds for the GCCMIF to support projects that foster economic competitiveness while enhancing environmental quality. EDA anticipates that these funds will be used to advance the green economy by supporting projects that create jobs through and increase private capital investment in initiatives to limit the nation's dependence on fossil fuels, enhance energy efficiency, curb greenhouse gas emissions, and protect natural systems. GCCMIF assistance is available to finance a variety of sustainability focused projects, including renewable energy end-products, the greening of existing manufacturing functions or processes, and the creation of certified green facilities. For example, EDA might provide funding to a non-profit working in cooperation with a county to construct a technology-focused business incubator that achieves platinum status under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system and to expand job training opportunities in industrial and green technologies.

An applicant seeking funding for an eligible project that will be funded exclusively or mostly from the GCCMIF should apply in the same manner that it would apply for Economic Adjustment Assistance Program funding. The applicant must include in the project narrative a detailed explanation of how the proposed project will help advance the goals of the GCCMIF. For more information on the goals of this initiative, contact the designated point of contact listed in section IX. of the FFO for the EDA regional office servicing your geographic area.

EDA allocated $25,000,000 in FY 2010 for the GCCMIF. The average size of a GCCMIF investment was approximately $840,000, though investments ranged from $200,000 to $1,500,000.

Please note that all of the above examples, average funding estimates, and ranges are informational only and are not intended to restrict future awards. *Please also see* section II.A. of the FFO.

What type of funding instrument will be used to make awards and how long will project periods be? Subject to the availability of funds, EDA may award grants or enter into cooperative agreements with an eligible applicant in order to provide funding for eligible investment activities. Project periods are dependent on the nature of the project and the EDA program under which the grant or cooperative agreement for the project is awarded. The project period generally depends upon the project scope of work. For example, the project period for a construction investment under EDA's Public Works Program may last for three years until construction is completed satisfactorily; while a strategy investment under EDA's Economic Adjustment Assistance Program may allow for one to three years for completion of the scope of work, depending on its complexity and/or urgency. EDA expects that all projects will proceed efficiently and expeditiously and encourages investments with demonstrated capacity to be implemented quickly and effectively, accelerating positive economic impacts.

Applicant Eligibility. Pursuant to PWEDA, eligible applicants for and eligible recipients of EDA investment assistance include a(n): (i) District Organization; (ii) Indian Tribe or a consortium of Indian Tribes; (iii) 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; (iv) institution of higher education or a consortium of institutions of higher education; or (v) 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-profit, private-sector entities are not eligible for investment assistance under PWEDA. In addition, EDA is not authorized to provide grants directly to individuals or to for-profit entities seeking to start or expand a private business. Such requests may be referred to State or local agencies, or to non-profit economic development organizations serving the region in which such a project will be located.

Economic Distress Requirements. Applicants are responsible for demonstrating to EDA the nature and level of economic distress in the region impacted by the proposed project. Applicants also are responsible for defining the region that the project will assist and must provide supporting statistics and other information, as appropriate. To be eligible under this notice, the project must be located in a region that, on the date EDA receives the application for investment assistance, meets one (or more) of the following economic distress criteria: (i) An unemployment rate that is, for the most recent 24 month period for which data are available, at least one percentage point greater than the national average unemployment rate; (ii) per capita income that is, for the most recent period for which data are available, 80 percent or less of the national average per capita income; or (iii) a "Special Need," as determined by EDA and as discussed below under "Special Need Criteria" and in section VII. of the FFO. *See* section 301 of PWEDA (42 U.S.C. 3161) and 13 CFR 301.3. EDA will evaluate the economic dislocations in the impacted region defined by the applicant and any supporting data provided by the applicant.

EDA reviews project eligibility at the time a complete application is received in the regional office. For economic distress levels based upon the unemployment rate or per capita income requirements, EDA will base its determination on the most recent American Community Survey (ACS) published by the U.S. Census Bureau for either: the region impacted by the proposed project, the geographic area where substantial direct project-related benefits will occur, or the geographic area of poverty or high unemployment, as applicable. If a recent ACS is not available to determine project eligibility, EDA will base its decision on the most recent Federal data from other sources (e.g., data available from the Census Bureau and the Bureaus of Economic Analysis, Labor Statistics, and Indian Affairs). If no Federal data are available, an applicant must submit to EDA the most recent data available through the government of the State in which the region is located (i.e., conducted by or at the direction of the State government). *See* section 301 of PWEDA (42 U.S.C. 3161) and 13 CFR 301.3. Other data may be submitted, as appropriate, to substantiate eligibility based on a "Special Need" (*see* "Special Need Criteria" below and section VII. of the FFO). The project must be eligible on the date EDA receives the application. In the case of an application received by EDA more than six months before the time of award, EDA will re-evaluate the project to determine continued eligibility for EDA investment assistance before making an award. EDA will reject any documentation of eligibility that it determines is inaccurate or incomplete, which may cause the application to be rejected.

What is the cost sharing or matching requirement? Generally, the amount of the EDA grant may not exceed 50 percent of the total cost of the project. Projects may receive an additional amount that shall not exceed 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 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 regarding these determinations.

In the application review process, EDA will consider the nature of the contribution (cash or in-kind) and the amount of the matching share funds. EDA will give preference to applications that include cash contributions (over in-kind contributions) as the matching share. 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 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.

Evaluation Criteria. EDA will evaluate applications based on their ability to satisfy the following core evaluation criteria, with each criterion assigned the weight indicated:

1. National Strategic Priorities. (30%)

EDA seeks to fund applications that encourage job growth and business expansion, as well as promoting one or more of the following initiatives:

- Technology-led economic development,
- Support to small- and medium-sized businesses,
- Global competitiveness and innovation,
- Responses to economic dislocation because of auto industry restructuring or natural disasters,
- Commercialization of research, and/or
- Environmentally sustainable development.

2. Economically Distressed and Underserved Communities (25%)

EDA seeks to fund applications that strengthen diverse communities that have suffered disproportionate economic and job losses or long-term severe economic distress, and/or are rebuilding to become more competitive in the global economy.

3. Return on Investment (25%)

EDA seeks to fund applications that demonstrate a high return on EDA's investment by demonstrating that the project will:

- Lead to the creation and/or retention of jobs, particularly high wage jobs for a particular community,
- Serve as a catalyst for private sector investment, and/or
- Be likely to stimulate economic development by demonstrating a high probability of leading to actionable projects or identifying specific benchmarks that will measure progress towards outputs.

Please note that the first two criteria above will be applied to applications for construction assistance, and the third to applications for non-construction assistance.

4. Collaborative Regional Innovation (10%)

EDA seeks to fund applications that support the development and growth of innovation clusters based on existing regional competitive strengths, which may be demonstrated by the extent to which an investment will:

- Promote collaboration among multi-jurisdictional leadership,
- Link and leverage regional assets, and/or
- Implement or build upon effective planning efforts.

5. Public/Private Partnerships (10%)

EDA seeks to fund applications that use both public and private sector resources, and/or leverage complementary investments by other government/public entities and/or non-profits.

All applicants are expected to provide a clear and detailed explanation as to how the proposed project will meet one or more of EDA's core evaluation criteria. For example, an applicant proposing technical assistance to help businesses develop and expand overseas markets via a business incubator or technology-based economic development center, for example, should include a detailed explanation as to how the applicant will assist their clients (start-ups or existing businesses) to develop markets abroad. EDA will consider applications that include such an explanation, including performance measures and deliverables, as applicable, more competitive than those that do not.

Please also see EDA's investment priorities for this notice, which may be

found on EDA's Web site at *http://www.eda.gov/InvestmentsGrants/InvestmentPriorities.xml.* Applicants are encouraged to review these priorities as they develop their projects.

Application Review and Selection Procedures. Throughout the review and selection process, EDA reserves the right to seek clarification in writing from applicants whose applications are being reviewed and considered. Applicants may be asked to clarify objectives and work plans and modify budgets or other specifics necessary to comply with Federal requirements and provide supplemental information required by the agency before award.

1. Optional Preliminary Reviews

EDA offers eligible applicants the option of receiving written feedback on their application before a funding cycle deadline. Ineligible applicants will be informed that they are ineligible for EDA funding. Please see section III.A. of the FFO for eligibility requirements. EDA will conduct a preliminary technical and merit review within 15 business days of its receipt of an application that meets the requirements set out in section V.A. of the FFO. The applicant will receive notification detailing any technical deficiencies identified during the review (for example, an incomplete preliminary engineering report or the need for a co-applicant), as well as an initial assessment of the application's competitiveness based on the criteria described below under "Evaluation Criteria" and in section IV.A. of the FFO. Applicants will be told if their application receives a "non-competitive," "competitive," or "highly competitive" rating. Based on this feedback, the applicant may revise and/or supplement the application or submit a substantially revised application by the funding cycle deadline or in time for consideration in a subsequent funding cycle. Note that EDA will apply the same evaluation criteria for conducting preliminary reviews as for reviewing complete applications after the funding cycle deadline. Please read carefully section V.A. of the FFO, which provides information on preliminary review requirements and procedures.

2. Responsiveness and Merit Reviews

EDA's regional office staff will review all complete applications from eligible applicants received by a funding cycle deadline for responsiveness. Applicants that are ineligible for EDA funding will be informed that they are ineligible. Applications that do not contain all forms and required documentation listed in section V.B. of the FFO may be deemed non-responsive and excluded from further consideration. EDA expects all applicants to complete and include all required forms and documentation. However, EDA in its sole discretion reserves the right to consider timely and otherwise complete applications that may contain non-substantive technical deficiencies.

After the responsiveness review, EDA staff will conduct a merit review for all applications determined to be responsive to this announcement. During the merit review process staff will evaluate independently applications based on the evaluation criteria listed below under "Evaluation Criteria" and in section IV.A. of the FFO. EDA staff will evaluate applications according to three categories: "non-competitive," "competitive," and "highly competitive." Applications that are evaluated as "non-competitive" during the merit review will not receive further review. Applications that are evaluated as "competitive" or "highly competitive" will be forwarded to an EDA Investment Review Committee for further evaluation.

EDA staff will notify applicants of the results of the merit review. Please note that notification that an application has been categorized as "competitive" or "highly competitive" is not a guarantee of funding. EDA receives far more competitive applications than it can fund.

3. Investment Review Committee

Each regional office will convene an Investment Review Committee (IRC) that consists of at least four Federal employees. One of the four members of each IRC will be appointed by the Deputy Assistant Secretary for Regional Affairs to represent EDA Headquarters and provide quality control assurance. Each IRC will discuss and evaluate each "competitive" and "highly competitive" application to determine if it meets the program-specific award and application requirements provided in 13 CFR 305.2 for Public Works investments and 13 CFR 307.2 and 307.4 for Economic Adjustment Assistance investments. The IRC also will apply the Selecting Factors set out below.

The IRC will recommend to the Regional Director those applications that merit funding. EDA expects to fund applications evaluated as "highly competitive" under the merit review; however, the IRC may decide not to make a recommendation, or may recommend an application categorized as "competitive" rather than "highly competitive" for several reasons, including the following Selecting Factors:

- A determination that the application better meets the overall objectives of section 2 of PWEDA (42 U.S.C. 3121);
- Relative economic distress of the applicant;
- Financial or management capability of the applicant;
- Availability of program funding;
- Geographic balance in distribution of program funds;
- Balance of diverse project types in the distribution of program funds;
- Balanced funding for a diverse group of organizations, to include smaller and rural organizations, which may form part of a broader consortium to serve diverse populations and areas within the regional office's territory;
- The applicant's performance under previous Federal financial assistance awards;
- A determination that a project is more likely to create jobs in a shorter timeframe; or
- Whether the project will enable BRAC-impacted communities to transition from a military to civilian economy and otherwise respond to economic impacts.

4. Grants Officer

Each region's IRC makes its recommendations to the respective Regional Director, who is the Grants Officer under this notice and who makes the final decision on whether to fund an application. The Regional Director might select a project that was not recommended by the IRC, or not to fund a project that was recommended, based on any of the Selecting Factors described above. The Regional Director's final decision must be consistent with EDA's and the DOC's published policies. Anytime the Regional Director makes a selection that differs from the IRC's recommendation, the Regional Director will document the rationale for the decision in writing.

As part of the selection process, EDA reserves the right to seek clarifications in writing from applicants for those applications deemed to have highest merit in order to facilitate the selection process.

Technical Assistance. Before each funding cycle deadline, EDA will provide technical assistance through its regional offices and via teleconferences and webinars to help assist applicants through the application process. *Please see* EDA's Web site at *http://www.eda.gov/InvestmentsGrants/Grant%20Process.xml* for more information on such opportunities. In order to ensure that applicants meet all

the requirements for a complete application, EDA encourages applicants to take advantage of these opportunities or to contact the point of contact for their region before submitting an application.

Additionally, an applicant may submit an application in advance of a funding cycle deadline to receive a preliminary review and written feedback on the technical and competitive merits of the proposed project. *Please see* section V.A. of the FFO for more information on this option.

Intergovernmental Review. Applications submitted under this notice are subject to the requirements of Executive Order (EO) 12372, "*Intergovernmental Review of Federal Programs,*" if a State has adopted a process under Executive Order 12372 to review and coordinate proposed Federal financial assistance and direct Federal development (commonly referred to as the "single point of contact review process"). All applicants must also give State and local governments a reasonable opportunity to review and comment on the proposed Project, including review and comment from area-wide planning organizations in metropolitan areas, as provided for in 15 CFR part 13. To find out more about a State's process under EO 12372, applicants may contact their State's Single Point of Contact (SPOC). Names and addresses of some States' SPOCs are listed on the Office of Management and Budget's home page at *http://www.whitehouse.gov/omb/grants/spoc.html.* Section A.11. of Form ED–900 provides more information and allows applicants to demonstrate compliance with EO 12372.

Are there any restrictions on the use of EDA funds?

Regulations, Administrative Requirements, and Cost Principles. Specific regulations, administrative requirements, and cost principles govern the use of EDA funds. The general and administrative requirements for EDA awards are set forth in 13 CFR parts 300–302. Specific application and award requirements for the Public Works and Economic Adjustment Assistance Programs are provided in 13 CFR parts 305 and 307, respectively. Note that EDA funds may not be used directly or indirectly to reimburse any attorneys' or consultants' fees incurred in connection with expediting applications for investment assistance. *See* 13 CFR 302.10. Please contact the applicable regional office listed in section IX. of the FFO for application and award requirements applicable to the GCCMIF Program. The uniform administrative requirements for DOC grants and cooperative agreements are codified at 15 CFR parts 14 and 24, as applicable. Note that for EDA's purposes, 15 CFR part 14 governs awards made to institutions of higher education and non-profit organizations and 15 CFR part 24 governs awards made to States and local governments. Funds awarded cannot necessarily pay for all the costs that the recipient may incur in the course of carrying out the project. Allowable costs under an EDA award are determined in accordance with the following regulations (incorporated by reference at 15 CFR parts 14 and 24): (i) 2 CFR part 220, "*Cost Principles for Educational Institutions (OMB Circular A–21)*"; (ii) 2 CFR part 225, "*Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A–87)*"; (iii) 2 CFR part 230, "*Cost Principles for Nonprofit Organizations (OMB Circular A–122)*"; and (iv) Federal Acquisition Regulation Subpart 31.2, "*Contracts with Commercial Organizations,*" codified at 48 CFR 31.2. Applicable administrative requirements and Federal cost principles are incorporated by reference into the terms and conditions of each EDA award. Generally, costs that are allowable include salaries, supplies, and other expenses that are reasonable and necessary for the completion of the scope of work. Indirect costs are not allowed on construction projects under this notice.

Nonrelocation. Applicants are advised that should an application be selected for award, the recipient will be required to adhere to a special award condition relating to EDA's nonrelocation policy as follows:

> In signing this award of financial assistance, Recipient(s) attests that EDA funding is not intended by the Recipient to assist its efforts to induce the relocation of existing jobs within the U.S. that are located outside of its jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for those purposes, EDA retains the right to pursue appropriate enforcement action in accord with the Standard Terms and Conditions of the Award, including suspension of disbursements and termination of the award for convenience or cause, which may include the establishment of a debt requiring the Recipient to reimburse EDA.

For purposes of ensuring that EDA assistance will not be used to merely transfer jobs from one location in the United States to another, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project assisted by EDA. EDA will consider an employer to be a "primary beneficiary" if the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance, provided that such employer also is specifically named in the application as benefiting from the project, or is or will be located in an EDA-assisted building, port, facility, or industrial, commercial, or business park constructed or improved in whole or in part with investment assistance prior to EDA's final disbursement of funds. In smaller communities, EDA may extend this policy to the relocation of 50 or more jobs.

Application Submission Requirements and Procedures

How can my organization submit an application? EDA will accept applications electronically through *http://www.grants.gov* as detailed in section V.H. of the FFO or in hard copy to the applicable regional office listed above under **ADDRESSES** and in section IX. of the FFO.

Optional Preliminary Review Requirements. As noted above under "Application Review and Selection Procedures" and in section V.A. of the FFO, eligible applicants have the option of requesting preliminary feedback on an application's technical and competitive merits from EDA at any time. Once an application is received, EDA will conduct a preliminary technical and merit review and provide written feedback to the applicant not later than 15 business days from the date of EDA's receipt of the application. EDA will apply the same evaluation criteria for conducting preliminary reviews as for reviewing complete applications after the funding cycle deadline. In addition, EDA will provide the applicant with its assessment from a preliminary review based only on the application submitted by the applicant. Please read section V.A. of the FFO carefully for complete information on what an applicant must submit for a preliminary review.

Applicants that submit the required information for a preliminary review will be notified of any technical deficiencies and if an application is evaluated as "non-competitive," "competitive," or "highly competitive." The applicant may modify or supplement the application based on this feedback or submit a substantially revised application by the funding cycle deadline or in time for consideration in a future funding cycle, and these decisions rests solely with the applicant.

An applicant that elects to receive feedback should take care to submit the

application sufficiently in advance of the funding cycle deadline so that EDA can provide feedback and the applicant can revise and/or provide additional documentation or submit a new application by the funding cycle deadline. EDA will make best efforts to review and provide feedback on applications submitted close to a funding cycle deadline; however EDA may not be able to provide feedback in a compressed timeframe. If an applicant does not submit its application in time for EDA to conduct a preliminary review for a particular funding cycle, EDA will still provide feedback to the applicant, but the feedback may be provided after the funding cycle deadline. However, if, in such a situation, if EDA determines an application is substantially deficient, the application will not receive further consideration during that funding cycle. If the applicant wishes for the application to be considered in a future funding cycle, the applicant must submit additional documentation to cure the deficiency or complete the documentation by the relevant deadline.

If EDA's written preliminary review instructs that an application is deficient or incomplete and the applicant does not revise and or supplement by the funding cycle deadline, EDA will not give the application further consideration. Applicants are strongly encouraged to submit as complete an application as possible. EDA's staff will be better able to perform a more comprehensive assessment and provide clear guidance if the applicant provides more and higher quality information. In all cases, an applicant must submit a complete application by a funding cycle deadline to be considered for funding in that funding cycle. Please see section V.B. of the FFO for information on a complete application.

Applicants are urged to seek technical assistance from EDA before submitting an application; however, in no event will a potential applicant be denied the ability to submit an application for EDA's consideration. Please note that the preliminary review described in this subsection is optional and is not required. An applicant retains full discretion to submit a complete application at any time.

What does a complete application package contain? The applicant must complete and submit the *Application for Investment Assistance* (Form ED–900) and accompanying supplemental information, the Federal grant assistance forms from the Standard Form (SF) 424 family, and certain DOC (CD) forms, as appropriate, as part of a complete application package. The specific SF forms required with the Form ED–900 depend on whether the applicant seeks construction or non-construction assistance. The following will assist the applicant in determining which forms are required for a complete application. Please see section V.D. of the FFO for information on obtaining application packages.

1. Construction Assistance

An applicant seeking assistance for a project with construction components is required to complete and submit the following:

- Form ED–900 (*Application for Investment Assistance*) and accompanying supporting documentation. One form per project is required. Please read the paragraphs below carefully for important information on submitting a complete Form ED–900.
- One Form SF–424 (*Application for Federal Assistance*) from each co-applicant, as applicable.
- Form SF–424C (*Budget Information—Construction Programs*). One form per project is required.
- One Form SF–424D (*Assurances—Construction Programs*) from each co-applicant, as applicable.
- One Form CD–511 (*Certification Regarding Lobbying*) from each co-applicant, as applicable.

2. Non-Construction Assistance

An applicant seeking assistance for a project without construction components is required to complete and submit the following:

- Form ED–900 (*Application for Investment Assistance*) and accompanying supporting documentation. One form per project is required. Please read the paragraphs below carefully for important information on submitting a complete Form ED–900.
- One Form SF–424 (*Application for Federal Assistance*) from each co-applicant, as applicable.
- Form SF–424A (*Budget Information—Non-Construction Programs*). One form per project is required.
- One Form SF–424 B (*Assurances—Non-Construction Programs*) from each co-applicant, as applicable.
- One Form CD–511 (*Certification Regarding Lobbying*) from each co-applicant, as applicable.

In addition, applicants may be required to provide certain lobbying information using Form SF–LLL (*Disclosure of Lobbying Activities*). Form ED–900 provided detailed guidance to help 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 competition. Some applicants, including non-profits and first-time recipients of DOC funding, may be required to complete an individual background screening using Form CD–346 before an award may be made; however, please note that this form is not required for a complete application, and EDA will request it when necessary.

3. Content of Form ED–900 and Instructions for Submitting a Complete Application

This section provides detailed instructions on what to expect when completing Form ED–900. Please note that some documentation that Form ED–900 advises may be submitted at a later date must be submitted by a funding cycle deadline to be considered for funding in that cycle.

Form ED–900 is divided into lettered sections that correspond to the specific EDA program for which an applicant is applying and that address all of EDA's statutory and regulatory requirements. Applicants applying under this opportunity will select that they are applying only for Public Works or Economic Adjustment Assistance on the first page of Section A of the form and the correct sections and exhibits required will automatically populate the form. As noted in section II.A.3. of the FFO, GCCMIF applicants should apply in the same manner that they would apply for Economic Adjustment Assistance. Based on program and project type, the following table details the sections and exhibits in Form ED–900 that the applicant must complete as well as the required supporting documentation.

Any application that does not have all of the required Form ED–900 sections and supplemental documentation will be considered incomplete. However, EDA, in its sole discretion, may determine that an omission was a non-substantial technical deficiency that can easily be rectified or cured and continue its consideration of the application in that funding cycle.

EDA program	Required form ED–900 sections
Public Works	Complete Sections A, B, and M and Exhibits A, D, and E.
Economic Adjustment	Complete Sections A, B, and K and Exhibit C. Also complete Sections M and Exhibits A, D, and E if the application has construction components and Section N if the application has only design/engineering requirements. Complete Section E if the application has no construction components.
For Design and Engineering Assistance under the Public Works or Economic Adjustment Programs.	Complete Sections A, B, and N and Exhibit C.
Revolving Loan Fund Assistance under the Economic Adjustment Program.	Complete Sections A, B, E, K, and L and Exhibit C.

In general, EDA does not typically reimburse pre-award project costs. Applicants that are in need of pre-award project cost reimbursement should work closely with EDA staff at the applicable regional office to determine if their pre-award costs may be considered for reimbursement. Note that for these costs to be eligible for reimbursement, the applicant must competitively procure services pursuant to the Federal Government's procurement procedures. Procurement requirement for institutions of higher education and non-profits are set out at 15 CFR 14.40–14.48 and requirements for State and local governments are set out at 15 CFR 24.36. Please note that these pre-award costs will only be considered for reimbursement if an applicant receives an award. As noted under section II.A. of the FFO, neither EDA nor DOC will be held responsible for application preparation expenditures, which are distinguishable from pre-award project costs.

Please note that all required documentation submitted for a complete application, including any required engineering reports and environmental narratives, must be current.

In addition to the required application forms, applicants must also submit certain supporting documentation for a complete application. Because of EDA's new funding cycle process, some instructions contained in Form ED–900 will be superseded by this notice and the companion FFO. Some documentation that Form ED–900 advises may be submitted at a later date must be submitted by a funding cycle deadline to be considered for funding in that cycle. The following list details the required submissions for applications by project type.

For all types of projects, both construction and non-construction, the following are required:

• Projects must be consistent with the region's Comprehensive Economic Development Strategy (CEDS) or alternate EDA-approved strategic planning document that meets EDA's CEDS or strategy requirements. A summary of EDA's CEDS and strategy requirements can be found at *http://www.eda.gov/InvestmentsGrants/Grant%20Process.xml. See also* section A.3. of Form ED–900, which requires applicants to identify the relevant plan. If EDA does not already have the applicable plan, the applicant may be required to provide it. Please contact the applicable regional office listed in section IX of the FFO for more information.

• Documentation confirming non-EDA funding, for examples letters of commitment and other documentation as necessary. For example, if bonds are contemplated as match, counsel opinion of the applicant's bonding authority and eligibility of the bonds for use as match, along with full disclosure of the type of bonds and the schedule of the applicant's intended bond issue are required. Please contact the applicable regional office listed in section IX. of the FFO with questions on this requirement. (*See also* section A.9. of Form ED–900).

For construction projects only, the following are required:

• Maps of the project site (U.S. Geological Survey (USGS) map(s) and Federal Emergency Management Agency (FEMA) floodplain map (if applicable)) with project components and beneficiaries noted (*see* section A.2. of Form ED–900).

• Letters of commitment and assurances of compliance (Exhibit A to Form ED–900) from private beneficiaries of the proposed project (*see* section B.5. of Form ED–900).

• Comments from the metropolitan area review/clearinghouse agency, if applicable. If the comment period has not expired or comments were not received, a copy of the applicant's request for comments is sufficient (*see* section M.1. of Form ED–900).

• A preliminary engineering report (all required elements are listed in section M.3. of Form ED–900; special formatting is not required). For additional guidance on preparing a preliminary engineering report, see EDA's Web site at *http://www.eda.gov/InvestmentsGrants/Grant%20Process.xml.*

• An environmental narrative that will enable EDA to comply with its National Environmental Policy Act (NEPA) responsibilities. An environmental narrative outline that details required components may be accessed on EDA's Web site *http://www.eda.gov/InvestmentsGrants/Grant%20Process.xml.* Please note that the environmental narrative required for a complete application does not need to include all applicable approvals at the time of submission. Applicants must include Appendix A (Applicant's Certification Clause) to the environmental narrative signed by each co-applicant, as applicable.

• Copies of any existing correspondence with or sign-offs/approvals from other agencies with respect to the project, such as the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, or the State or Tribal Historic Preservation Officer. Please note that an applicant will not be required to submit all required sign-offs/approvals by a funding cycle deadline for an application to be considered complete. If the application does not include sign-offs/approvals from appropriate agencies and EDA subsequently determines that these are required, the applicant will be required to obtain them before EDA will approve an award. For additional information about this requirement, please contact the applicable Regional Environmental Officer (REO) listed in section IX. of the FFO.

• Copies of any other environmental studies that have already been completed for the project site, if available.

• Comments from the State Clearinghouse to comply with Executive Order 12372, if applicable. If the comment period has not expired or comments were not received, a copy of the applicant's request for comments is sufficient. Detailed information on the State Clearinghouse process can be accessed at *http://www.whitehouse.gov/omb/grants_spoc.*

For Revolving Loan Fund projects only, the following is required:

• RLF Plan for the RLF's financial management. *See* EDA's regulation at 13 CFR 307.9 for more information on requirements for RLF Plans.

For non-profit applicants only, including each non-profit co-applicant, if applicable, the following are required:

• Certificate of good standing from the State in which the non-profit is incorporated, if applicable.

• A copy of the organization's current Articles of Incorporation, or other formation documents, as applicable, and By-Laws.

• Resolution (or letter) from a general purpose subdivision of State government acknowledging that the organization is acting in cooperation with officials of that political subdivision.

As noted under section IV.A. of the FFO, applicants are expected to provide a clear and detailed explanation as to how the proposed project will meet one or more of EDA's core evaluation criteria. EDA will consider applications that include such an explanation, with performance measures and deliverables, as applicable, as more competitive than those that do not.

Award Administration Information

How will EDA notify applicants? EDA expects to notify applicants of its decision within 20 business days of a funding cycle deadline. EDA will retain unsuccessful applications in the applicable regional office in accordance with EDA's record retention schedule. EDA will notify applicants whose projects EDA expects to fund through the competitive evaluation process via a Non-Binding Commitment (NBC) letter. Although the letter expresses the applicant's success in the competitive portion of the evaluation process, it will not legally obligate EDA to make an award to the applicant. Once an applicant receives this letter, the applicant will be required to complete certain due diligence requirements and pass a set of technical reviews by EDA staff to ensure compliance with all applicable rules and regulations, including title, project ownership, environmental, and other requirements, as applicable. If the applicant successfully fulfills all requirements to EDA's satisfaction within the allotted time frame, the expectation is that EDA will proceed with the official award and obligation of funds.

If the application is selected for funding and successfully completes all due diligence requirements, the EDA Grants Officer will issue the grant award (Form CD–450), which is the authorizing financial assistance award document. By signing the Form CD–450, the recipient agrees to comply with all award provisions. EDA will provide the Form CD–450 by mail or overnight delivery to the appropriate business office of the recipient's organization. The recipient must sign and return the Form CD–450 without modification within 30 days of receipt. If an applicant is awarded funding, neither DOC 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 DOC and of EDA. Applicants that do not receive an NBC letter or denial letter will be so advised and given the option to carry over their application for consideration in the next funding cycle.

Information disclosure. The Freedom of Information Act (5 U.S.C. 552 and DOC regulations at 15 CFR part 4) (FOIA) sets forth the process and procedure DOC follows to make requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications, proposals, and other information submitted by applicants may be released in response to FOIA requests. Applicants should be aware that EDA may make certain application information publically available. The applicant should notify EDA if it believes any application information to be confidential.

"*Special Need*" *Criteria.* The following criteria are published in accordance with 13 CFR 301.3(a)(1)(iii) and define what may constitute a "Special Need" (as defined in 13 CFR 300.3) sufficient to make a project eligible for Public Works or Economic Adjustment investment assistance, as described in section III.B. of the FFO. Only applications for Public Works or Economic Adjustment Assistance may be found eligible under a "Special Need," and EDA will determine the maximum allowable investment rates for such projects. The applicant will be asked to present appropriate economic or demographic statistics to demonstrate a "Special Need."

A project is eligible pursuant to a "Special Need" if the project is located in a region that meets one of the criteria described below:

1. Closure or restructuring of industrial firms or loss of a major employer essential to the regional economy. A region has experienced either:

a. An actual closure or restructuring of a firm(s) within the past 12 months prior to application, resulting in sudden job losses and meeting the following dislocation criteria; or

b. A threat of closure that results from a public announcement of an impending closure or restructuring of a firm(s) expected to occur within two years of application; AND

c. Such actual or threatened closure results in sudden job losses meeting the following dislocation criteria:

• For regions with a population of at least 100,000, the actual or threatened dislocation is 500 jobs, or one percent of the civilian labor force (CLF), whichever is less.

• For regions with a population up to 100,000, the actual or threatened dislocation is 200 jobs, or one percent of the CLF, whichever is less.

2. Substantial out-migration or population loss. An applicant seeking eligibility under this criterion will be asked to present appropriate and compelling economic or demographic data to demonstrate the special need.

3. Underemployment, meaning employment of workers at less than full-time or at less skilled tasks than their training or abilities permit. An applicant seeking eligibility under this criterion will be asked to present appropriate and compelling economic and demographic data to demonstrate the special need.

4. Military base closures or realignments, defense contractor reductions-in-force, or Department of Energy defense-related funding reductions.

a. A military base closure refers to a military base that was closed or is scheduled for closure, realignment, or growth pursuant to the base closure and realignment process or other Department of Defense (DOD) process. Unless further extended by the Assistant Secretary, the region is eligible from the date of DOD's recommendation for closure, realignment, or growth until five years after the actual date of closing of the installation or five years after the announced realignment or growth actually occurs.

b. A defense contractor reduction-in-force refers to a defense contractor(s) experiencing defense contract cancellations or reductions resulting from official DOD announcements and having aggregate value of at least $10 million per year. Actual dislocations must have occurred within one year of application to EDA and threatened dislocations must be anticipated to occur within two years of application to EDA. Defense contracts that expire in the normal course of business will not be considered to meet this criterion.

c. A Department of Energy defense-related funding reduction refers to a Department of Energy facility that has experienced or will experience a reduction of employment resulting from its defense mission change. The area is eligible from the date of the Department of Energy announcement of reductions until five years after the actual date of reduced operations at the installation.

5. Natural or other major disasters or emergencies, including terrorist attacks. Unless further extended by the Assistant Secretary, a region that has received one of the following disaster declarations is eligible to apply for EDA assistance for a period of 18 months after the date of declaration:

a. A Presidentially Declared Disaster declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121 *et seq.*); or

b. A Federally Declared Disaster pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. 1861a(a)); or

c. A Federally Declared Disaster pursuant to the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1961); or

d. A Federally Declared Disaster pursuant to the Small Business Act, as amended (Pub. L. 85–536, 72 Stat. 384 (1958)).

6. Extraordinary depletion of natural resources or other impact attributable to a new or revised Federal regulation or policy that will have a significant impact on a community to avoid an extraordinary depletion of natural resources. For example, in the case of a Federal fishing regulation designed to promote and sustain a community and its fishery in the long-term, EDA could quickly help a coastal community respond to any short-term economic dislocations.

7. Communities undergoing transition of their economic base as a result of changing trade patterns. An area certified as eligible by the North American Development Bank (NADBank) Program or the Community Adjustment and Investment Program (CAIP).

8. Other special need. The area is experiencing other special or extraordinary economic adjustment needs, as determined by the Assistant Secretary.

Other Requirements

The Department of Commerce Administrative and National Policy Requirements: Administrative and national policy requirements for all DOC awards are 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). This notice may be accessed by entering the **Federal Register** volume and page number provided in the previous sentence at the following Internet Web site: *http://www.gpoaccess.gov/fr/index.html.*

Environmental and Historic Preservation Requirements: All applicants for EDA construction assistance are required to provide adequate environmental information. Each application will be reviewed by EDA for compliance with the National Environmental Policy Act of 1969, as amended (NEPA). During the NEPA review process, applicants may be instructed to contact the designated State Historic Preservation Officer (SHPO) and/or participate in consultation with a tribe and/or a Tribal Historic Preservation Officer (THPO), provide approvals from other governmental agencies, or provide more detailed environmental information. The implementing regulations of NEPA require EDA to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected public, as specified in 40 CFR 1506.6(b). For further guidance and information, please contact the REO in the appropriate regional office listed in section IX. of the FFO, or refer to the Environmental and Historic Preservation information on EDA's Web site, available at *http://www.eda.gov/InvestmentsGrants/Grant%20Process.xml.*

OMB Circular A–133 Audit Requirements: Single or program-specific audits shall be performed in accordance with the requirements contained in OMB Circular A–133, "*Audits of States, Local Governments, and Non-Profit Organizations,*" and the related *Compliance Supplement.* OMB Circular A–133 requires any non-Federal entity (i.e., non-profit organizations, including non-profit institutions of higher education and hospitals, States, local governments and Indian tribes) that expends Federal awards of $500,000 or more in the recipient's fiscal year to conduct a single or program-specific audit in accordance with the requirements set out in the Circular.

The applicant is reminded that EDA or the DOC's Office of Inspector General also may conduct an audit of an award at any time.

Universal Identifier, and Central Contractor Registration Requirements and Reporting Under the Transparency Act

DUNS Numbers and CCR Registration: Be advised that all applicants for Federal assistance are required to obtain a universal identifier in the form of Dun and Bradstreet Data Universal Numbering System (DUNS) numbers and maintain a current registration in the Central Contractor Registration (CCR) database. Per the requirements of 2 CFR part 25, each applicant must:

- Be registered in the CCR before submitting an application;
- Maintain an active CCR registration with current information at all times during which it has an active Federal award or an application under consideration by an agency; and
- Provide its DUNS number in each application or plan it submits to the agency.

Please see also the **Federal Register** notice published September 14, 2010 at 75 FR 55671.

Reporting Under the Transparency Act: All recipients of a Federal award made on or after October 1, 2010 are required to comply with reporting requirements under the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act) per the requirements of 2 CFR part 170. In general, all recipients are responsible for reporting subawards of $25,000 or more. In addition, recipients that meet certain criteria are responsible for reporting executive compensation. Applicants must ensure they have the necessary processes and systems in place to comply with the reporting requirements should they receive funding. Please see also the **Federal Register** notice published September 14, 2010 at 75 FR 55663.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and approved by OMB: Form ED–900 (*Application for Investment Assistance*) (OMB Control Number 0610–0094); Form SF–424 (*Application for Financial Assistance*) (OMB Control Number 4040–0004); Form SF–424A (*Budget Information—Non-Construction Programs*) (OMB Control Number 4040–0006); Form SF–424B (*Assurances—Non-Construction Programs*) (OMB Control Number 4040–0007); Form SF–424C (*Budget Information—Construction Programs*) (OMB Control Number 4040–0008), SF–424D (*Assurances—Construction Programs*) (OMB Control Number 4040–0009);

Form SF–LLL (*Disclosure of Lobbying Activities*) (OMB Control Number 0348–0046); and Form CD–346 (*Applicant for Funding Assistance*) (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: October 7, 2010.

John Fernandez,

Assistant Secretary of Commerce for Economic Development.

[FR Doc. 2010–25896 Filed 10–13–10; 8:45 am]

BILLING CODE 3510–24–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

The following notice of meeting is published pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, 5 U.S.C. 552b.

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: The Commission has scheduled two meetings for the following dates:

October 19, 2010 at 9:30 a.m.
October 26, 2010 at 9:30 a.m.

PLACE: Three Lafayette Center, 1155 21st St., NW., Washington, DC. Lobby Level Hearing Room (Room 1000).

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission has scheduled these meetings to consider the issuance of various proposed rules. Agendas for each of the scheduled meetings will be made available to the public and posted on the Commission's Web site at *http://www.cftc.gov* at least seven (7) days prior to the meeting. In the event that the times or dates of the meetings change, an announcement of the change, along with the new time and place of the meeting, will be posted on the Commission's Web site.

CONTACT PERSON FOR MORE INFORMATION: David A. Stawick, Secretary of the Commission, 202–418–5071.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2010–25582 Filed 10–12–10; 4:15 pm]

BILLING CODE P

DEPARTMENT OF DEFENSE

Office of the Secretary

Federal Advisory Committee; Board of Regents of the Uniformed Services University of the Health Sciences

AGENCY: Uniformed Services University of the Health Sciences (USU); DoD.

ACTION: Quarterly meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended), DoD announces that the Board of Regents of the Uniformed Services University of the Health Sciences will meet on November 9, 2010, in Bethesda, MD.

DATES: The meeting will be held on Tuesday, November 9, 2010 from:

8 a.m. to 12 noon (Open Session).
12 noon to 1:30 p.m. (Closed Session).

ADDRESSES: The meeting will be held at the Everett Alvarez Jr. Board of Regents Room (D 3001), Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: Janet S. Taylor, Designated Federal Officer, 4301 Jones Bridge Road, Bethesda, Maryland 20814; telephone 301–295–3066. Ms. Taylor can also provide base access procedures.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting

Meetings of the Board of Regents assure that USU operates in the best traditions of academia. An outside Board is necessary for institutional accreditation.

Agenda

The actions that will take place include the approval of minutes from the Board of Regents Meeting held August 3, 2010; acceptance of reports from working committees; approval of faculty appointments and promotions; and the awarding of master's and doctoral degrees in the biomedical sciences and public health. The Board will also hear reports from the President, USU; the Dean, School of Medicine; the Dean, Graduate School of Nursing; and the president of the Faculty Senate. These actions are necessary for the University to pursue its mission, which is to provide outstanding health care practitioners and scientists to the uniformed services.

Meeting Accessibility

Pursuant to Federal statute and regulations (5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165) and the availability of space, most of the meeting is open to the public. Seating is on a first-come basis. The closed portion of this meeting is authorized by 5 U.S.C. 552b(c)(6) as the subject matter involves personal and private observations.

Written Statements

Interested persons may submit a written statement for consideration by the Board of Regents. Individuals submitting a written statement must submit their statement to the Designated Federal Official (*see* **FOR FURTHER INFORMATION CONTACT**). If such statement is not received at least 10 calendar days prior to the meeting, it may not be provided to or considered by the Board of Regents until its next open meeting. The Designated Federal Officer will review all timely submissions with the Board of Regents Chairman and ensure such submissions are provided to Board of Regents Members before the meeting. After reviewing the written comments, submitters may be invited to orally present their issues during the November 2010 meeting or at a future meeting.

Dated: October 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2010–25872 Filed 10–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0142]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on November 15, 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: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 1, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: October 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS E05

SYSTEM NAME:

Mandatory Declassification Review Files (March 28, 2007; 72 FR 14533).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Chief, Records and Declassification Division, Executive Services Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with, "Individuals who request Mandatory Declassification Review (MDR) or appeal a Mandatory Declassification Review determination. These include DoD, Executive Branch Agencies, public or contractors."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with, "Name, address, and organization of person making MDR request or appeal, identification of records requested, dates and summaries of action taken."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with, "E.O. 13526, Classified National Security Information; DoD Instruction 5200.01, DoD Information Security Program and Protection of Sensitive Compartmented Information."

PURPOSE(S):

Delete entry and replace with, "To process requests and/or appeals from individuals for the mandatory review of classified documents for the purposes of releasing declassified material to the public; and to provide a research resource of historical data on release of records to ensure consistency in subsequent actions. Data developed from this system is used for the annual report required by the applicable Executive Order(s) governing classified National Security Information. This data also serves management needs, by providing information about the number of requests; the type or category of records requested; and the average processing time."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with, "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

* * * * *

SAFEGUARDS:

Delete entry and replace with, "Paper records are maintained in a Defense Security vault, with all physical security requirements to ensure the protection of special compartmented information. Within the vault, the paper files are stored in security containers with access limited to officials having a need-to-know based on their assigned duties. Computer systems require Common Access Card (CAC) and passwords. Users are limited according to their assigned duties to appropriate access on a need-to-know basis."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with, "Chief, Records and Declassification Division, Executive Services Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155."

NOTIFICATION PROCEDURE:

Delete entry and replace with, "Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Chief, Records and Declassification Division, Executive Services Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the individual's name and address of the individual at the time the record would have been created."

RECORD ACCESS PROCEDURES:

Delete entry and replace with, "Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the name and number of this system of records notice along with the individual's name and address of the individual at the time the record would have been created and be signed."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with, "The individual."

* * * * *

DWHS E05

SYSTEM NAME:

Mandatory Declassification Review Files.

SYSTEM LOCATION:

Chief, Records and Declassification Division, Executive Services Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who request Mandatory Declassification Review (MDR) or appeal a Mandatory Declassification Review determination. These include DoD, Executive Branch Agencies, public or contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, and organization of person making MDR request or appeal, identification of records requested, dates and summaries of action taken.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 13526, Classified National Security Information; DoD Instruction 5200.01, DoD Information Security Program and Protection of Sensitive Compartmented Information.

PURPOSE(S):

To process requests and/or appeals from individuals for the mandatory review of classified documents for the purposes of releasing declassified material to the public; and to provide a research resource of historical data on release of records to ensure consistency in subsequent actions. Data developed from this system is used for the annual report required by the applicable Executive Order(s) governing classified National Security Information. This data also serves management needs, by providing information about the number of requests; the type or category of records requested; and the average processing time.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper file folders and electronic storage media.

RETRIEVABILITY:

Retrieved by name of requester and other pertinent information, such as organization or address, subject material describing the MDR item (including date), MDR request number using computer indices, referring agency, or any combination of fields.

SAFEGUARDS:

Paper records are maintained in a Defense Security vault, with all physical security requirements to ensure the protection of special compartmented information. Within the vault, the paper files are stored in security containers with access limited to officials having a need-to-know based on their assigned duties. Computer systems require Common Access Card (CAC) and passwords. Users are limited according to their assigned duties to appropriate access on a need-to-know basis.

RETENTION AND DISPOSAL:

Files that grant access to records are held in current status for two years after the end of the calendar year in which created, then destroyed. Files pertaining to denials of requests are destroyed 5 years after final determination. Appeals are retained for 3 years after final determination.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Records and Declassification Division, Executive Services Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to Chief, Records and Declassification Division, Executive Services Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the individual's name and address of the individual at the time the record would have been created.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Office of the Secretary of Defense/Joint Staff, Freedom of Information Act Requester Service Center, Office of Freedom of Information, 1155 Defense Pentagon, Washington, DC 20301–1155.

Written requests should include the name and number of this system of records notice along with the individual's name and address of the individual at the time the record would have been created and be signed.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense rules for accessing records, for contesting contents and appealing initial agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–25870 Filed 10–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2010–OS–0143]

Privacy Act of 1974; System of Records

AGENCY: Department of Defense (DoD).

ACTION: Notice to alter a system of records.

SUMMARY: The Office of the Secretary of Defense proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on November 15, 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: Ms. Cindy Allard at (703) 588–6830.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Chief, OSD/JS Privacy Office, Freedom of Information Directorate, Washington Headquarters Services, 1155 Defense Pentagon, Washington DC 20301–1155.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on October 1, 2010, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: October 8, 2010.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

V5–05

SYSTEM NAME:

Joint Personnel Adjudication System (JPAS) (July 1, 2005; 70 FR 38120).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with "DMDC 12 DoD".

* * * * *

SYSTEM LOCATION:

Delete entry and replace with "Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "Complete investigation packages and documenting records conducted by Federal investigative organizations (*e.g.,* U.S. Office of Personnel Management (OPM), Central Intelligence Agency, NASA, etc.) and locator references to such investigations. Records documenting the personnel security adjudicative and management process, to include an individual's Social Security Number (SSN); name (both current, former and alternate names); date of birth; place of birth; country of citizenship; type of DoD affiliation; employing activity; current employment status; position sensitivity; personnel security investigative basis; status of current adjudicative action; security clearance eligibility and access status; whether eligibility determination was based on a condition, deviation from prescribed investigative standards or waiver of adjudication guidelines; reports of security-related incidents, to include issue files; suspension of eligibility and/or access; denial or revocation of eligibility and/or access; eligibility recommendations or decisions made by an appellate authority; non-disclosure execution dates; indoctrination date(s); level(s) of access granted; debriefing date(s); and reasons for debriefing."

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "50 U.S.C. 401, Congressional declaration of purpose; 50 U.S.C. 435, Purposes; DoD 5200.2R, Department of Defense Personnel Security Program Regulation; DoD 5105.21–M–1, Sensitive Compartment Information Administrative Security Manual; E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 12333, United States Intelligence Activities; E.O. 12829, National Industrial Security Program; E.O. 12968, Access to Classified Information; and E.O. 9397 (SSN), as amended."

PURPOSE(S):

Delete entry and replace with "The Joint Personnel Adjudication System (JPAS) is an enterprise automated system for personnel security management, providing a common, comprehensive medium to record and document personnel security actions within the Department, including granting interim clearances and submitting investigations. Decentralized access is authorized at the nine central adjudication facilities and DoD Component security offices. JPAS also compiles statistical data for use in analyses and studies."

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as follows:

To the White House to obtain approval of the President of the United States regarding certain military personnel office actions as provided for in DoD Instruction 1320.4, Military Officer Actions Requiring Approval of the Secretary of Defense or the President, or Confirmation by the Senate.

To the U.S. Citizenship and Immigration Service for use in alien admission and naturalization inquiries.

To the Office of the Director of National Intelligence, the Federal Bureau of Investigation; the National Aeronautics and Space Administration; the Central Intelligence Agency; the Office of Personnel Management; the Department of State, the Department of the Treasury; the Internal Revenue Service; the U.S. Postal Service; the U.S. Secret Service; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the U.S. Customs and Border Protection; Department of Homeland Security; and any other related Federal agencies for the purpose of determining access to National Security Information (NSI) pursuant to E.O. 12968, Access to Classified Information.

To authorized industry users for the purpose of verifying eligibility and determining access to National Security Information (NSI) of their employees.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices also apply to this system."

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Delete entry and replace with "Electronic storage media."

* * * * *

SAFEGUARDS:

Delete entry and replace with "Electronically and optically stored records are maintained in fail-safe system software with password-protected access. Records are accessible only to authorized persons with a valid need-to-know, who are appropriately screened, investigated and determined eligible for access. During non-duty hours, alarms systems and/or security or military police guards secure all locations. Only authorized personnel with a valid need-to-know are allowed access to JPAS. Additionally, access to JPAS is based on a user's specific

functions, security eligibility and access level."

RETENTION AND DISPOSAL:

Delete entry and replace with "Disposition pending. Until the National Archives and Records Administration has approved the disposition, treat records as permanent."

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington VA 22209–2593.

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771."

NOTIFICATION PROCEDURE:

Delete entry and replace with "Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

Written requests must contain the full name (and any alias and/or alternate names used), Social Security Number (SSN), and date and place of birth."

RECORDS ACCESS PROCEDURES:

Delete entry and replace with "Individuals seeking information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Individuals should provide their full name (and any alias and/or alternate names used), Social Security Number (SSN), and date and place of birth.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: 'I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).'

If executed within the United States, its territories, possessions, or commonwealths: 'I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).'

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

Because JPAS is a joint DoD system, it may be necessary to refer specific data to the DoD Component where it originated for a release determination."

CONTESTING RECORD PROCEDURES:

Delete entry and replace with "The Office of the Secretary of Defense/Joint Staff rules for accessing records, and for contesting or appealing agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81, 32 CFR part 311; or may be obtained directly from the system manager."

RECORDS SOURCE CATEGORIES:

Delete entry and replace with "Information contained in this system is derived from the appropriate DoD personnel systems; Consolidated Adjudication Tracking System (CATS); records maintained by the DoD adjudicative agencies; and records maintained by security managers, special security officers, or other officials requesting and/or sponsoring the security eligibility determination for the individual. Additional information may be obtained from other sources (such as personnel security investigations, personal financial records, military service records, medical records and unsolicited sources.)"

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager."

* * * * *

DMDC 12 DoD

SYSTEM NAME:

Joint Personnel Adjudication System (JPAS).

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Department of Defense active and reserve military personnel; civilian employees and applicants; DoD contractor employees and applicants; National Guard personnel; U.S. Coast Guard military and civilian personnel and applicants requiring access to National Security and/or Sensitive Compartmented Information; "affiliated" personnel (such as Non-Appropriated Fund employees, Red Cross volunteers and staff; USO personnel, and congressional staff members); and foreign nationals whose duties require access to National Security Information (NSI) and/or assignment to a sensitive position.

CATEGORIES OF RECORDS IN THE SYSTEM:

Complete investigation packages and documenting records conducted by Federal investigative organizations (*e.g.,* U.S. Office of Personnel Management (OPM), Central Intelligence Agency, NASA, etc.) and locator references to such investigations. Records documenting the personnel security adjudicative and management process, to include an individual's Social Security Number (SSN); name (both, current, former and alternate names); date of birth; place of birth; country of citizenship; type of DoD affiliation; employing activity; current employment status; position sensitivity; personnel security investigative basis; status of current adjudicative action; security clearance eligibility and access status; whether eligibility determination was based on a condition, deviation from prescribed investigative standards or waiver of adjudication guidelines; reports of security-related incidents, to include issue files; suspension of eligibility and/or access; denial or revocation of eligibility and/or access; eligibility recommendations or decisions made by an appellate authority; non-disclosure execution dates; indoctrination date(s); level(s) of access granted; debriefing date(s); and reasons for debriefing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. 401, Congressional declaration of purpose; 50 U.S.C. 435, Purposes; DoD 5200.2R, Department of Defense Personnel Security Program Regulation; DoD 5105.21–M–1, Sensitive Compartment Information Administrative Security Manual; E.O. 10450, Security Requirements for Government Employment; E.O. 10865, Safeguarding Classified Information Within Industry; E.O. 12333, United States Intelligence Activities; E.O. 12829, National Industrial Security

Program; and E.O. 12968, Access to Classified Information; and E.O. 9397 (SSN), as amended.

PURPOSE(S):

The Joint Personnel Adjudication System (JPAS) is an enterprise automated system for personnel security management, providing a common, comprehensive medium to record and document personnel security actions within the Department, including granting interim clearances and submitting investigations. Decentralized access is authorized at the nine central adjudication facilities and DoD Component security offices. JPAS also compiles statistical data for use in analyses and studies.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as follows:

To the White House to obtain approval of the President of the United States regarding certain military personnel office actions as provided for in DoD Instruction 1320.4, Military Officer Actions Requiring Approval of the Secretary of Defense or the President, or Confirmation by the Senate.

To the U.S. Citizenship and Immigration Services for use in alien admission and naturalization inquiries.

To the Office of the Director of National Intelligence, the Federal Bureau of Investigation; the National Aeronautics and Space Administration; the Central Intelligence Agency; the Office of Personnel Management; the Department of State, the Department of Treasury; the Internal Revenue Service; the U.S. Postal Service; the U.S. Secret Service; the Bureau of Alcohol, Tobacco, Firearms and Explosives; the U.S. Customs and Border Protection; Department of Homeland Security; any other related Federal agencies for the purpose of determining access to National Security information (NSI) pursuant to E.O. 12968, Access to Classified Information.

To authorized industry users for the purpose of verifying eligibility and determining access to National Security Information (NSI) of their employees.

The DoD "Blanket Routine Uses" set forth at the beginning of the Office of the Secretary of Defense compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Information is retrieved by full name, Social Security Number (SSN), date of birth, state and/or country of birth.

SAFEGUARDS:

Electronically and optically stored records are maintained in "fail-safe" system software with password-protected access. Records are accessible only to authorized persons with a valid need-to-know, who are appropriately screened, investigated and determined eligible for access. During non-duty hours, alarms systems and/or security or military police guards secure all locations. Only authorized personnel with a valid need-to-know are allowed access to JPAS. Additionally, access to JPAS is based on a user's specific functions, security eligibility and access level.

RETENTION AND DISPOSAL:

Disposition pending. Until the National Archives and Records Administration has approved the disposition, treat records as permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington VA 22209–2593.

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

Written requests must contain the full name (and any alias and/or alternate names used), Social Security Number (SSN), and date and place of birth.

RECORDS ACCESS PROCEDURES:

Individuals seeking information about themselves contained in this system should address written inquiries to the Office of the Secretary of Defense/Joint Staff Freedom of Information Act Requester Service Center, 1155 Defense Pentagon, Washington, DC 20301–1155.

Individuals should provide their full name (and any alias and/or alternate names used), Social Security Number (SSN), and date and place of birth.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

Attorneys or other persons acting on behalf of an individual must provide written authorization from that individual for their representative to act on their behalf.

Because JPAS is a "joint" DoD system, it may be necessary to refer specific data to the DoD Component where it originated for a release determination.

CONTESTING RECORD PROCEDURES:

The Office of the Secretary of Defense/Joint Staff rules for accessing records, and for contesting or appealing agency determinations are published in Office of the Secretary of Defense Administrative Instruction 81, 32 CFR part 311; or may be obtained directly from the system manager.

RECORDS SOURCE CATEGORIES:

Information contained in this system is derived from the appropriate DoD personnel systems; Consolidated Adjudication Tracking System (CATS); records maintained by the DoD adjudicative agencies; and records maintained by security managers, special security officers, or other officials requesting and/or sponsoring the security eligibility determination for the individual. Additional information may be obtained from other sources (such as personnel security investigations, personal financial records, military service records, medical records and unsolicited sources.)

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with

requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 311. For additional information contact the system manager.

[FR Doc. 2010–25871 Filed 10–13–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Notice of meeting of the Air University Board of Visitors.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Air University Board of Visitors' meeting will take place on Monday, November 15th, 2010, from 12:15 p.m. to 5 p.m. and Tuesday, November 16th, 2010, from 8 a.m. to 5:30 p.m. The meeting will be held in the Air University Commander's Conference Room located in building 800. Please contact Dr. Dorothy Reed, 334–953–5159 for further details of the meeting location.

The purpose of this meeting is to provide independent advice and recommendations on matters pertaining to the educational, doctrinal, and research policies and activities of Air University. The agenda will include topics relating to the policies, programs, and initiatives of Air University educational programs. Additionally, four working groups will meet to discuss issues relating to academic affairs; research; future learning and technology; and institutional advancement.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 all sessions of the Air University Board of Visitors' meeting will be open to the public. Any member of the public wishing to provide input to the Air University Board of Visitors should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. Additionally, any member of the public wishing to attend this meeting should contact either person listed below at least five calendar days prior to the meeting for information on base entry passes.

FOR FURTHER INFORMATION CONTACT: Dr. Dorothy Reed, Designated Federal Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force Base, Alabama 36112–6335, telephone (334) 953–5159 or Mrs. Diana Bunch, Alternate Designated Federal Officer, same address, telephone (334) 953–4547.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 2010–25824 Filed 10–13–10; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before November 15, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov*. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The 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.

Dated: October 8, 2010.

Sheila Carey,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title of Collection: Student Support Services Annual Performance Report.

OMB Control Number: 1840–0525.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Total Estimated Number of Annual Responses: 947.

Total Estimated Annual Burden Hours: 5,682.

Abstract: The Department of Education is requesting a reinstatement without change of the previously approved annual performance report, which was discontinued on November 30, 2009 (OMB No.: 1840–0525), to collect data under the Student Support Services (SSS) Program. Reinstating the report would allow the Department to collect consistent performance data for as much as the grant cycle as possible from current SSS grantees, which were given a one-time, one-year extension due to the negotiated rulemaking process underway to implement the Higher Education Opportunity Act (HEOA) revisions to the Higher Education Act, the authorizing statute for the program. Beginning next year and pending a final rule, all new and continuing grantees will submit performance data consistent with the changes made by the HEOA.

Requests for copies of the information collection submission for OMB review may be accessed from the RegInfo.gov

Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4344. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–25912 Filed 10–13–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 516–459]

South Carolina Electric & Gas Company; Notice of Authorization for Continued Project Operation

October 6, 2010.

On August 28, 2008 South Carolina Electric & Gas Company, licensee for the Saluda Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Saluda Hydroelectric Project is on the Saluda River in Richland, Lexington, Saluda, and Newberry counties, South Carolina.

The license for Project No. 516 was issued for a period ending August 31, 2010. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year-to-year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 516 is issued to the South Carolina Electric & Gas Company for a period effective September 1, 2010 through August 31, 2011, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before August 31, 2011, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that South Carolina Electric & Gas Company is authorized to continue operation of the Saluda Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25798 Filed 10–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–135–001]

Southern California Gas Company; Notice of Baseline Filing

October 6, 2010.

Take notice that on October 4, 2010, Southern California Gas Company submitted a revised baseline filing of its Statement of Operating Conditions for services provided under Section 311 of the Natural Gas Policy Act of 1978 (NGPA).

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, October 18, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25800 Filed 10–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI10–19–000]

Howard Rosenfeld; Notice of Declaration of Intention and Soliciting Comments, Protests, and/or Motions To Intervene

October 6, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI10–19–000.

c. *Date Filed:* September 17, 2010.

d. *Applicant:* Howard Rosenfeld.

e. *Name of Project:* Warren Energy Independence Hydroelectric Project.

f. *Location:* The proposed Warren Energy Independence Hydroelectric Project will be located on Sucker Brook, a.k.a. Lake Waramaug Brook, tributary to Aspetuck River and the Housatonic River, near the town of Warren, Litchfield County, Connecticut.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Paul V. Nolan, 5515 North 17th Street, Arlington, VA 22205–2722; *telephone:* (703) 534–5509; *Fax:* (703) 538–5257; *e-mail: http://www.pvnpvn@aol.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or *E-mail address: henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* November 08, 2010.

All documents should be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp*. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. Please include the docket number (DI10–19–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The proposed Warren Energy Independence Hydroelectric Project will consist of: (1) An existing natural lake; (2) an existing 80-foot-long, 4-foot-wide, 5-foot-high masonry dam; (3) a proposed 18-inch-diameter, 535-foot-long PVC penstock; (4) an existing 22-foot-long, 22-foot-wide, 25-foot-high existing mill building, containing a new 10-kW turbine/generator; (5) a bank of batteries for use on site; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", AND/OR "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25793 Filed 10–13–10; 8:45 am]

BILLING CODE 6717–01–PGPO Galley End:?≤

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–244; Docket No. EL00–98–228]

San Diego Gas and Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange; Investigation of Practices of the California Independent System Operator and the California Power Exchange Corporation; Notice of Filing

October 6, 2010.

Take notice that on October 6, 2010, the California Power Exchange Corporation filed supplemental information to its May 4, 2010 refund compliance report, which was filed pursuant to the Federal Energy Regulatory Commission's November 20, 2008 *Order on Rehearing and Motions for Clarification and Accounting,* 125 FERC ¶ 61,214.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 27, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25795 Filed 10–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–3337–000]

Ridgewind Power Partners, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

October 6, 2010.

This is a supplemental notice in the above-referenced proceeding of Ridgewind Power Partners, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 26, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25796 Filed 10–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at the Southwest Power Pool ICT Stakeholder Policy Committee Meeting and the Entergy Regional State Committee Meeting

October 6, 2010.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of its staff may attend the meetings noted below. Their attendance is part of the Commission's ongoing outreach efforts.

ICT Stakeholder Policy Committee Meeting

October 20, 2010 (8 a.m.–12 p.m.), Hyatt Regency Downtown Austin, 208 Barton Springs Road, Austin, TX 78704, 888–421–1442.

Entergy Regional State Committee Meeting

October 20, 2010 (1 p.m.–5 p.m.), October 21, 2010 (8 a.m.–12 p.m.), Hyatt Regency Downtown Austin, 208 Barton Springs Road, Austin, TX 78704, 888–421–1442.

The discussions may address matters at issue in the following proceedings:

Docket No. OA07–32	Entergy Services, Inc.
Docket No. OA08–59	Entergy Services, Inc.
Docket No. EL00–66	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL01–88	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL07–52	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL08–51	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL08–60	*Ameren Services Co.* v. *Entergy Services, Inc.*
Docket No. EL09–43	*Arkansas Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL09–50	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL09–61	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL09–78	*South Mississippi Electric Power Association* v. *Entergy Services, Inc.*
Docket No. EL10–55	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. EL10–65	*Louisiana Public Service Commission* v. *Entergy Services, Inc.*
Docket No. ER05–1065	Entergy Services, Inc.
Docket No. ER07–682	Entergy Services, Inc.
Docket No. ER07–956	Entergy Services, Inc.
Docket No. ER08–767	Entergy Services, Inc.
Docket No. ER08–1056	Entergy Services, Inc.
Docket No. ER09–636	Entergy Services, Inc.
Docket No. ER09–833	Entergy Services, Inc.
Docket No. ER09–1214	Entergy Services, Inc.
Docket No. ER09–1224	Entergy Services, Inc.
Docket No. ER10–794	Entergy Services, Inc.

Docket No. ER10–879	Entergy Services, Inc.
Docket No. ER10–984	Entergy Services, Inc.
Docket No. ER10–1350	Entergy Services, Inc.
Docket No. ER10–1367	Entergy Services, Inc.
Docket No. ER10–1763	Entergy Arkansas, Inc.
Docket No. ER10–1764	Entergy Gulf States, Louisiana, Inc.
Docket No. ER10–1765	Entergy Louisiana, LLC.
Docket No. ER10–1766	Entergy Mississippi, Inc.
Docket No. ER10–1767	Entergy Texas, Inc.
Docket No. ER10–1769	Entergy New Orleans, Inc.
Docket No. ER10–2216	Entergy Arkansas, Inc.
Docket No. ER10–2223	Entergy Mississippi, Inc.
Docket No. ER10–2224	Entergy Texas, Inc.
Docket No. ER10–2226	Entergy Louisiana, LLC.
Docket No. ER10–2228	Entergy New Orleans, Inc.
Docket No. ER10–2247	Entergy Services, Inc.
Docket No. ER10–2267	Entergy Services, Inc.
Docket No. ER10–2292	Entergy Services, Inc.
Docket No. ER10–2299	Entergy Services, Inc.
Docket No. ER10–2748	Entergy Services, Inc.

These meetings are open to the public.

For more information, contact Patrick Clarey, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25797 Filed 10–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. DI10–21–000]

Dirk Wiggins; Notice of Petition for Declaratory Order and Soliciting Comments, Protests, and/or Motions To Intervene

October 6, 2010.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Petition for Declaratory Order.

b. *Docket No.:* DI10–21–000.

c. *Date Filed:* September 9, 2010.

d. *Applicant:* Dirk Wiggins.

e. *Name of Project:* Duane Wiggins Hydro Project.

f. *Location:* The existing Duane Higgins Hydro Project is located on Spring Creek, near the town of Joseph, Wallowa County, Oregon, affecting T. 03 S., R. 45 E., sec. 28, Willamette Meridian.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Dirk Wiggins, 84646 Ponderosa Lane, Joseph, Oregon 97846; telephone: (541) 432–5263; *E-mail: http://www.dirk.wiggins@gmail.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton, (202) 502–8768, or *E-mail address: henry.ecton@ferc.gov.*

j. *Deadline for filing comments, protests, and/or motions:* November 8, 2010.

All documents should be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* Please include the docket number (DI10–21–000) on any comments, protests, and/or motions filed.

k. *Description of Project:* The existing Duane Wiggins Hydro Project consists of: (1) A 13-foot-long, 3.75-foot-wide, 2-foot-deep pond; (2) a 1-foot-high lumber diversion into 2.5-foot-high, 3.75-foot-wide wooden box; (2) a 4.5-inch-diameter, 1,367-foot-long steel pipe penstock; (3) a 8-foot-long, 10-foot-wide steel powerhouse containing a 20-kW Pelton-type turbine/generator; (4) a 40-foot-long tailrace to Spring Creek; (5) a 1,000-foot-long transmission line; and (6) appurtenant facilities. The project will be connected to an interstate grid.

When a Petition for Declaratory Order is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the proposed project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214.

In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "PROTESTS", and/or "MOTIONS TO INTERVENE", as applicable, and the Docket Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25794 Filed 10–13–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[]Docket No. PR05–16–002]

Enstor Grama Ridge Storage and Transportation, LLC; Notice of Petition for Rate Approval

October 6, 2010.

Take notice that on September 24, 2010, Enstor Grama Ridge Storage and Transportation, LLC filed pursuant to section 385.212 of the Commission's regulations, a petition requesting that the Commission remove the five-year rate filing requirement that the Commission had previously imposed in its order granting market-based rate authority.

Any person desiring to participate in this rate proceeding must file a motion to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern time on Monday October 18, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–25799 Filed 10–13–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2003–0004; FRL–8850–5]

Access to Confidential Business Information by Avanti Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Avanti Corporation of Alexandria, VA, to access information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data will occur no sooner than October 21, 2010.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Pamela Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (202) 564–8956; *fax number:* (202) 564–8955; *e-mail address: moseley.pamela@epa.gov.*

For general information contact: The TSCA–Hotline, ABVI–Goodwill, 422 South Clinton Ave., Rochester, NY 14620; *telephone number:* (202) 554–1404; *e-mail address: TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this notice apply to me?

This action is directed to the public in general. This action may, however, be of interest to all who manufacture, process, or distribute industrial chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2003–0004. 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, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov,* or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification,

pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

II. What action is the agency taking?

Under EPA contract number GS–10F–0308P, Order Number EP10H002115, contractor Avanti Corporation, 5520 Cherokee Avenue, Suite 205, Alexandria, VA will assist EPA's Office of Pollution Prevention and Toxics (OPPT) in providing technical and administrative support for meetings related to investigation of chemicals and biotechnology products for possible regulatory or other control actions. They will also provide computer data base support related to providing information on chemical regulatory actions and related policy decisions.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number GS–10F–0308P, Order Number EP10H002115, Avanti will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. Avanti's personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide Avanti access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters in accordance with EPA's *TSCA CBI Protection Manual.*

Access to TSCA data, including CBI, will continue until October 31, 2015. If the contract is extended, this access will also continue for the duration of the extended contract without further notice.

Avanti's personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: October 7, 2010.

Matthew Leopard,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2010–25908 Filed 10–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2007–0904 and 1182; FRL–9213–2]

Agency Information Collection Activities: Proposed Collections; Request for Comment on Three Proposed Information Collection Requests (ICRs)

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 EPA is planning to submit a request to renew one existing approved Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). ICR 1826.06 is scheduled to expire May 31, 2011. EPA is also planning to submit a request to revise ICR 1684.16, which is scheduled to expire on July 31, 2012. Before submitting these ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collections as described below.

DATES: Comments must be submitted on or before December 13, 2010.

ADDRESSES: Submit your comments, identified by the Docket ID numbers provided for each item in the text, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* Air Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* Docket Center, (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to the Docket ID Numbers identified for each item in the text. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Nydia Yanira Reyes-Morales, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6403J, Washington, DC 20460; *telephone number:* 202–343–9264; *fax number:* 202–343–2804; *e-mail address: reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for each of the ICRs identified in this document (*see* the Docket ID numbers for each ICR that are provided in the text), which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in

the Docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activities or ICRs does this apply to?

Docket ID Number: EPA–HQ–OAR–2007–0904

Affected Entities: Entities potentially affected by this action are manufacturers of nonroad compression ignition and spark ignition engines and equipment.

Title: Transition Program for Equipment Manufacturers.

ICR Numbers: EPA ICR No. 1826.06, OMB Control No. 2060–0369.

ICR status: This ICR is currently scheduled to expire on May 31, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: When EPA establishes new regulations with tighter engine emission standards, engine manufacturers often need to change the design of their engines to achieve the emission reductions required by the new standards. Consequently, original equipment manufacturers (OEMs) may also need to redesign their products to accommodate these engine design changes. Sometimes, OEMs have trouble making the necessary adjustments by the effective date of the regulations. In an effort to provide OEMs with some flexibility in complying with the regulations, EPA created the Transition Program for Equipment Manufacturers (TPEM). Under the program, OEMs are allowed to delay compliance with the new standards for up to seven years as long as they comply with certain limitations. Participation in the program is voluntary. Participating OEMs and engine manufacturers who provide the noncompliant engines are required to keep records and submit reports of their activities under the program.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 80.5 hours per equipment manufacturer and 74.5 hours per engine manufacturer. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

- *Estimated total number of potential respondents:* 213.
- *Frequency of response:* Annual.
- *Estimated total average number of responses for each respondent:* 1.
- *Estimated total annual burden hours:* 17,069.
- *Estimated total annual costs:* $848,582. This includes an estimated burden cost of $5,829 for operation and maintenance costs.

Are there changes in the estimates from the last approval?

To date, there are no changes in the number of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. However, EPA is still evaluating information that may lead to a change in the estimates.

Docket ID Number: EPA–HQ–OAR–2007–1182

Affected entities: Entities potentially affected by these actions are manufacturers of nonroad compression ignition engines and on-highway heavy-duty engines; and owners of heavy-duty truck fleets.

Title: Emissions Certification and Compliance Requirements for Nonroad Compression-ignition Engines and On-highway Heavy Duty Engines.

ICR Numbers: EPA ICR No. 1684.16, OMB Control No. 2060–0287.

ICR status: This ICR is currently scheduled to expire on July 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or

form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection is requested under the authority of Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*). Under Title II, EPA is charged with issuing certificates of conformity for those engines which comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. Certification requirements for nonroad compression-ignition engines and on-highway heavy duty engines are set forth at 40 CFR Parts 86, 89, 94, 1039, and 1065. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production line, including detailed descriptions of the emission control system and test data. This information is organized by "engine family" groups expected to have similar emission characteristics. Manufacturers must also comply with requirements related to audits and other compliance assurance programs. There are also recordkeeping and labeling requirements. Manufacturers electing to participate in the Averaging, Banking and Trading (ABT) Program are also required to submit information regarding the calculation of projected and actual generation and usage of credits in an initial report, end-of-year report and final report. These reports are used for certification and enforcement purposes. Manufacturers need to maintain records for eight years on the engine families participating in the program.

This ICR is being revised to include EPA's Heavy-duty Engine In-use Testing Program. This program is currently part of another existing approved ICR.

Burden Statement: The annual public reporting and recordkeeping burden is estimated to average 2,113 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

- *Estimated total number of potential respondents:* 122.
- *Frequency of response:* Annual and quarterly and on occasion.
- *Estimated total average number of responses for each respondent:* 17.
- *Estimated total annual burden hours:* 143,694.
- *Estimated total annual costs:* $13,985,374. This includes an estimated burden cost of $5,484,884 for operation and maintenance costs.

Are there changes in the estimates from the last approval?

Yes. EPA is revising this ICR to include EPA's Heavy-duty Engine In-use Testing Program which is currently part of ICR 0222.09, OMB Number 20060–0086. EPA is still evaluating information that may lead to further changes in the estimates.

What is the next step in the process for these ICRs?

EPA will consider the comments received and amend the ICRs as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: October 6, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2010–25898 Filed 10–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9213–3]

Agency Information Collection Activities; Proposed Collection; Comment Request for Production Outlook Reports for Un-Registered Renewable Fuel Producers; EPA ICR No. 2409.01

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 EPA is planning to submit a request to for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR affects certain unregistered renewable fuel producers, who are not required to register or report under the renewable fuels program (RFS2), to voluntarily submit the same or similar information contained in a production outlook report. These producers are most likely in the planning stages, but expect to begin producing renewable fuels in the next five (5) calendar years. Participation by respondents is strictly voluntary. EPA plans to use the existing production outlook report format for submissions by these parties.

DATES: Comments must be submitted on or before December 13, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2005–0161 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Mail:* Air Docket, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Fax or Hand Delivery:* EPA's Public Reading Room is located in Room 3334 of the EPA West Building, 1301 Constitution Ave., NW., Washington, DC. Docket hours are Monday through Friday, 8 a.m. until 4:30 p.m., excluding legal holidays. In order to ensure to arrange for proper fax or hand delivery of materials, please call the Air Docket at 202–566–1742.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2005–0161. 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 for which 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.*

FOR FURTHER INFORMATION CONTACT: Anne-Marie Pastorkovich, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9623; *fax number:* (202) 343–2801; *e-mail address: pastorkovich.anne-marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2005–0161. The docket is available for online viewing at *http://www.regulations.gov,* and for in-person viewing at EPA's Public Reading Room. The Public Reading Room is located in the EPA West Building, 1301 Constitution Ave., NW., Room 3334, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST) in its new location, Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c) (2) (A) of the Paperwork Reduction Act, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are un-registered renewable fuel producers.

Title: Production Outlook Reports for Unregistered Renewable Fuel Producers.

ICR numbers: EPA ICR No. 2409.01.

ICR status: This is a proposal for a new ICR. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: With this information collection request (ICR) renewal, we are seeking permission to accept production outlook reports from domestic and foreign renewable fuel producers who are not currently regulated parties under the RFS2 program. The respondents for this ICR are not required to register or report under the RFS2 regulations. Submission of production outlook information to EPA under this ICR will be voluntary.

We believe that many parties would wish to submit this information in order to receive better assistance in understanding and preparing to comply with the RFS2 regulations. A typical respondent would be a renewable fuel producer who is in the process of developing plans for, or constructing, a renewable fuel production facility or that is currently opting out of the RFS2 program under 40 CFR 80.1426(c)(3). Such a respondent would not be required to register or report under RFS2 because it is not yet producing renewable fuel subject to the regulation. However, the respondent would likely wish to provide the information in order to receive feedback from EPA and to aid its planning for future compliance with the RFS2 regulations and annual compliance standards.

Respondents that voluntarily provide the information requested through this ICR will benefit from doing so. The information that respondents provide will allow EPA to more accurately project cellulosic biofuel volumes for the following calendar year, and these volume projections will form the basis of the percentage standards EPA sets under the RFS2 program. Without information from these respondents, EPA's volume projections are more likely to fall below actual projection volumes. Under such circumstances, supply for cellulosic biofuel will exceed demand, and the value of cellulosic biofuel Renewable Identification Numbers (RINs) will fall. RINs are marketable credits that correspond to a given volume of renewable fuel. Since RIN market price directly affects the economic viability of cellulosic biofuel production, low RIN prices could present economic difficulties to producers. Thus, it is in the interests of

these respondents to provide this information to EPA, as doing so could ensure that the market price of RINs appropriately reflects the value of their cellulosic biofuel. This information also serves a more general program purpose, because it will assist EPA in setting the annual RFS2 standard more accurately.

We estimate that approximately 35 parties would choose to participate in this voluntary information collection. The format for submitting the production outlook information to EPA would follow the "RFS2 Production Outlook Form, Report Form ID: RFS0900." Collection of reports from regulated parties is covered under the RFS2 ICR, OMB Control No. 2060–0640 (Expiration Date July 31, 2013). A copy of the RFS0900 form may be viewed at *http://www.epa.gov/otaq/regs/fuels/rfs0900.pdf* (instructions to form) and *http://www.epa.gov/otaq/regs/fuels/rfs0900.xls* (form).

We are requesting that the Office of Management and Budget (OMB) approve this ICR and that it be effective three years after approval.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4 hours per respondent and 4 hours per response. Burden means the total time, effort, or financial resources expended by a person to generate, maintain, retain, or disclose or provide information to (or for) a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; to process and maintain information; to disclose and provide information; to adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. We anticipate 35 respondents, submitting one response each.

The draft supporting statement, which has been placed in the public docket, contains detailed estimates for this proposed ICR.

Are there changes in the estimates from the last approval?

This is a proposed, new, voluntary information collection. All the estimates provided above, and in the supporting statement (which has been placed in the public docket) are for a new and voluntary collection of information.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: October 6, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 2010–25894 Filed 10–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9213–4]

Agency Information Collection Activities; Proposed Collection; Comment Request for Alternative Affirmative Defense Requirements for Ultra-Low Sulfur Diesel Fuel; EPA ICR No. 2364.03

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 EPA is planning to submit a request to renew an Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR affects diesel refiners, importers, and distributors.

DATES: Comments must be submitted on or before December 13, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1158 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-Docket@epa.gov.*
- *Mail:* Air Docket, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Fax or Hand Delivery:* EPA's Public Reading Room is located in Room 3334 of the EPA West Building, 1301 Constitution Ave., NW., Washington, DC. Docket hours are Monday through Friday, 8 a.m. until 4:30 p.m., excluding legal holidays. In order to ensure to arrange for proper fax or hand delivery of materials, please call the Air Docket at 202–566–1742.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2007–1158. 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 for which 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.*

FOR FURTHER INFORMATION CONTACT: Anne-Marie Pastorkovich, Office of Transportation and Air Quality, Transportation and Regional Programs Division, Mail Code 6406J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 343–9623; *fax number:* (202) 343–2801; *e-mail address: pastorkovich.anne-marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2007–1158. The docket is available for online viewing at *http://*

www.regulations.gov, and for in-person viewing at EPA's Public Reading Room. The Public Reading Room is located in the EPA West Building, 1301 Constitution Ave., NW., Room 3334, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST) in its new location, Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is 202–566–1742. Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c) (2) (A) of the Paperwork Reduction Act, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are diesel refiners, importers, and distributors.

Title: Alternative Affirmative Defense Requirements for Ultra-Low Sulfur Diesel Fuel.

ICR numbers: OMB Control Number 2060–0639; EPA ICR No. 2364.03.

ICR status: This is a proposal to renew an existing ICR. The OMB control numbers for EPA's regulations in Title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: With this information collection request (ICR) renewal, we are seeking permission to continue to accept reports from refiners, importers, and distributors regarding non-complying sulfur test results.

Specifically, the highway diesel program regulations require most motor vehicle (highway) diesel fuel sold at retail stations to contain 15 parts per million (ppm) sulfur or less (hereafter referred to as ultra low sulfur diesel fuel, or ULSD) beginning October, 2006. Where a violation of the 15 ppm sulfur standard is identified at a retail outlet, the retailer responsible for dispensing the noncompliant fuel is deemed liable, as well as the refiner(s), importer(s) and distributor(s) of such fuel. The highway diesel regulations further provide, however, that any person deemed liable can rebut this presumption by establishing an affirmative defense that includes, among other things, showing that it conducted a quality assurance sampling and testing program as prescribed by the regulations. This ICR covers burdens and costs associated with the provision that allows refiners and importers of ULSD an alternative means of meeting the affirmative defense requirements in the diesel sulfur regulations by participating in a nationwide diesel fuel sampling and testing program. The reporting burden covered by this proposed ICR related to reports that refiners, importers and distributors, have to submit in the event they have a non-complying sulfur test result. (*See* 40 CFR 80.613.) The authority citation for the direct final rule and the association information collection is for the following Clean Air Act sections: 42 United States Code §§ 7414, 7542, 7545, and 7601(a).

We are requesting that the Office of Management and Budget (OMB) renew this ICR and that it be effective three years after approval.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 16 hours per respondent and 16 hours per response. Burden means the total time, effort, or financial resources expended by a person to generate, maintain, retain, or disclose or provide information to (or for) a Federal agency. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; to process and maintain information; to disclose and provide information; to adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; to train personnel to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. We anticipate 20 respondents, submitting one response each.

The draft supporting statement, which has been placed in the public docket, contains detailed estimates for this proposed ICR.

Are there changes in the estimates from the last approval?

This is a proposed renewal of an existing information collection. The estimates have not changed from the last approval.

What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue

another **Federal Register** notice pursuant to 5 CFR 1320.5(a) (1) (iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: October 6, 2010.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 2010–25900 Filed 10–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9213–6]

Availability of FY 09 Grantee Performance Evaluation Reports for the Eight States of EPA Region 4 and 16 Local Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability; Clean Air Act Section 105 grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.115) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of eight state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Georgia Department of Natural Resources; Commonwealth of Kentucky Department for Environmental Protection; Mississippi Department of Environmental Quality; North Carolina Department of Environment and Natural Resources; South Carolina Department of Health and Environmental Control; and Tennessee Department of Environment and Conservation) and 16 local programs (City of Huntsville Division of Natural Resources, AL; Jefferson County Department of Health, AL; Broward County Environmental Protection Department, FL; City of Jacksonville Environmental Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Miami-Dade County Air Quality Management Division, FL; Palm Beach County Health Department, FL; Pinellas County Department of Environmental Management, FL; Louisville Metro Air Pollution Control District, KY; Forsyth County Environmental Affairs Department, NC; Mecklenburg County Land Use and Environmental Services Agency, NC; Western North Carolina Regional Air Quality Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; Memphis-Shelby County Health Department, TN; Knox County Department of Air Quality Management, TN; and Metropolitan Government of Nashville and Davidson County Public Health Department, TN). The 24 evaluations were conducted to assess the agencies' Fiscal Year 2009 performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection.

ADDRESSES: The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW., Atlanta, Georgia 30303, in the Air, Pesticides and Toxics Management Division. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Marie Persinger (404) 562–9048 for information concerning the state and local agencies of Alabama and Kentucky; Artra Cooper (404) 562–9047 for the state and local agencies of Florida; Mary Echols (404) 562–9053 for the state agency of Georgia; Seema Rao (404) 562–8429 for the state and local agencies of North Carolina; Angela Isom (404) 562–9092 for the state agencies of Mississippi and South Carolina; and Gwendolyn Graf (404) 562–9289 for the state and local agencies of Tennessee. They may be contacted at the Region 4 address mentioned in the previous section of this notice.

Dated: September 28, 2010.

Gwendolyn Keyes Fleming,

Regional Administrator, Region 4.

[FR Doc. 2010–25897 Filed 10–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9213–1]

Notice of a Public Meeting: Stakeholder Meeting Concerning EPA's Long-Term Revisions to the Regulation of Lead and Copper in Drinking Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has convened a regulatory workgroup to evaluate potential long-term revisions to EPA's regulations for the control of lead and copper in drinking water. This set of regulations is known as the Lead and Copper Rule (LCR). EPA is holding a stakeholder meeting to provide information to the public and an opportunity for the public to provide input on potential revisions to the LCR under consideration by the Agency. Discussion topics may include but are not limited to lead service line replacement, actions that could be taken at schools and monitoring procedures and sample site selection. Teleconferencing will be available for individuals unable to attend the meeting in person.

DATES: The public meeting will be held on Thursday, November 4, 2010 (9 a.m. to 4 p.m., Eastern Time (ET)).

ADDRESSES: The meeting will be held at the Pennsylvania Convention Center, 1101 Arch Street, Philadelphia, Pennsylvania 19107–2208.

FOR FURTHER INFORMATION CONTACT: For general inquiries, please contact The Safe Drinking Water Hotline, Telephone (800) 426–4791 or *e-mail: hotline-sdwa@epa.gov*. For information about this meeting, contact Jerry Ellis, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency; telephone (202) 564–2766 or by e-mail to *ellis.jerry@epa.gov*. For those that would like to participate via teleconference, please contact Junie Percy of IntelliTech at (937) 427–4148 ext. 210 or by e-mail to j*unie.percy@itsysteminc.com* for teleconference information.

SUPPLEMENTARY INFORMATION: The Lead and Copper Rule is contained in 40 CFR Part 141, Subpart I. We encourage those planning to attend or participate via teleconference to register for the meeting by calling Junie Percy of IntelliTech at (937) 427–4148 ext. 210 or by e-mail to *junie.percy@itsysteminc.com* no later than November 1, 2010. There is no charge for attending this public meeting, but seats are limited, so register as soon as possible. Walk-in attendees are allowed, but seating preference will be given to those who have pre-registered. Individual oral comments should be limited to no more than five minutes and it is preferred that only one person present the statement on behalf of a group or organization.

Special Accommodations

For information on access or request for special accommodations for

individuals with disabilities, please contact Junie Percy at IntelliTech at (937) 427–4148 ext. 210 or by e-mail to *junie.percy@itsysteminc.com* Please allow at least five business days prior to the meeting to allow time to process your request.

Dated: October 7, 2010.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 2010–25901 Filed 10–13–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0684; FRL–8848–5]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; withdrawal of notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrant and accepted by the Agency, of the products listed in Table 1 of Unit II, pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows a February 2, 2010, **Federal Register** Notice of Receipt of Requests from the registrant listed in Table 2 of Unit II., to voluntarily cancel these product registrations. This cancellation order also follows an April 7, 2010, **Federal Register** notice, which includes (in part) duplicative notice of the same requests. With respect to the products that are the subject of this order, the duplicative portions of the April 7, 2010, notice were issued in error and are hereby withdrawn. In the February 2, 2010, notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 180-day comment period that would merit its further review of these requests, or unless the registrant withdrew their request. The Agency received comments on the notice but none merited its further review of the requests. Further, the registrant did not withdraw their request. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stock provisions.

DATES: The cancellations are effective October 14, 2010.

FOR FURTHER INFORMATION CONTACT: Daniel Peacock, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; *telephone number:* (703) 305–5407; *fax number:* (703) 308–0029; *e-mail address: peacock.daniel@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, 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 person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0684. 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 Office of Pesticide Programs (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's telephone number is (703) 305–5805.

II. What action is the agency taking?

This notice announces the cancellation, as requested by the registrant, of products registered under FIFRA section 3. These registrations are listed in sequence by the registration number in Table 1 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

EPA Registration No.	Product name	Chemical name
NE–060001	Rozol Prairie Dog Bait ...	Chlorophacinone
CO–060009	Rozol Prairie Dog Bait ...	Chlorophacinone
KS–070003	Rozol Prairie Dog Bait ...	Chlorophacinone
WY–070005	Rozol Prairie Dog Bait ...	Chlorophacinone
TX–070008	Rozol Prairie Dog Bait ...	Chlorophacinone
OK–080002	Rozol Prairie Dog Bait ...	Chlorophacinone

Table 2 of this unit includes the name and address of record for the registrant of the products listed in Table 1 of this unit.

TABLE 2—REGISTRANTS OF CANCELED PRODUCTS

EPA Company No.	Company name and address
7173	Liphatech, 3600 West Elm St., Milwaukee, WI 53209.

III. Summary of Public Comments Received and the Agency Response to Comments

The comments submitted during the comment period expressed a general opposition to the use of anticoagulants to control prairie dogs, and none addressed the requests for voluntary cancellation. Therefore, the Agency does not believe that the comments merit further consideration with respect to those requests.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are subject of this notice is October 14, 2010. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a

manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI., will be a violation of FIFRA.

V. What is the agency's authority for taking this action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve the request. The notice of receipt for this action was published for comment in the **Federal Register** issued on February 2, 2010 (75 FR 5318) (FRL–8809–8). The comment period closed on August 2, 2010.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stock provisions for the products subject to this order are as follows.

The registrant may continue to sell and distribute existing stocks of products listed in Table 1 of Unit II. until October 14, 2011, which is 1 year after the publication of the cancellation order in the **Federal Register**. Thereafter, the registrant is prohibited from selling or distributing products listed in Table 1 of Unit II., except for export in accordance with FIFRA section 17, or proper disposal. Persons other than the registrant may sell, distribute, or use existing stocks of products listed in Table 1 of Unit II., until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: October 1, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2010–25905 Filed 10–13–10; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Emergency Extension Without Change: Local Union Report (EEO–3).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a 90-day emergency extension of the Local Union Report (EEO–3), to be effective after the current October 31, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from local unions on the EEO–3 form since 1966 (biennially since 1985).

Overview of Information Collection

Collection Title: Local Union Report (EEO–3).
OMB Number: 3046–0006.
Frequency of Report: Biennial.
Type of Respondent: Referral local unions with 100 or more members.
Description of Affected Public: Referral local unions and independent or unaffiliated referral unions and similar labor organizations.
Responses: 1,399.
Reporting Hours: 4,500 (including recordkeeping).
Cost to Respondents: $85,000.
Federal Cost: $60,000.
Number of Forms: 1.
Form Number: EEOC Form 274.
Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires labor organizations to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to produce reports from the data. The EEOC issued regulations requiring referral local unions with 100 or more members to submit EEO–3 reports. The individual reports are confidential. The EEOC uses EEO–3 data to investigate charges of discrimination and for research.
Burden Statement: The estimated number of respondents included in the biennial EEO–3 survey is 1,399 referral unions. The form is estimated to impose 4,500 burden hours biennially. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: September 23, 2010.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2010–25885 Filed 10–13–10; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Emergency Extension Without Change: Employer Information Report (EEO–1).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for an emergency extension of the Employer Information Report (EEO–1) to be effective after the current October 31, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from certain private employers on the EEO–1 Report form since 1966.

Overview of Information Collection

Collection Title: Employer Information Report (EEO–1).
OMB Number: 3046–0007.
Frequency of Report: Annual.
Type of Respondent: Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.
Description of Affected Public: Private employers with 100 or more employees and certain federal government contractors and first-tier subcontractors with 50 or more employees.
Reporting Hours: 599,000.
Respondent Cost: $11.4 million.
Federal Cost: $2.1 million.
Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the EEO–1 reporting requirement. Employers in the private sector with 100 or more employees and some federal contractors with 50 or more employees have been required to submit EEO–1 reports annually since 1966. The individual reports are confidential. EEO–1 data is used by EEOC to investigate charges of employment discrimination against employers in private industry and to provide information about the employment status of minorities and women. The data is shared with the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, and several other federal agencies. Pursuant to § 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–1 data is also shared with state and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the annual EEO–1 survey is 45,000 private employers. The estimated number of establishment-based responses per reporting company is between three and four EEO–1 reports annually. The annual number of responses is approximately 170,000. The form is estimated to impose 599,000 burden hours annually. In order to help reduce survey burden, respondents are encouraged to report data electronically whenever possible.

Dated: September 23, 2010.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2010–25892 Filed 10–13–10; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of Information Collection—Emergency Extension Without Change: Elementary-Secondary Staff Information Report (EEO–5).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a 90-day emergency extension of the Elementary-Secondary Staff Information Report (EEO–5) to be effective after the current October 31, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: Elementary and secondary public school systems and districts have been required to submit EEO–5 reports to EEOC since 1974 (biennially in even-numbered years since 1982). Since 1996, each public school district or system has submitted all of the district data on a single form, EEOC Form 168A. The individual school form, EEOC Form 168B, was eliminated in 1996, reducing the respondent burden and cost.

Overview of Information Collection

Collection Title: Elementary-Secondary Staff Information Report (EEO–5).

OMB–Number: 3046–0003.

Frequency of Report: Biennial.

Type of Respondent: Certain public elementary and secondary school districts.

Description of Affected Public: Certain public elementary and secondary school districts.

Number of Responses: 7,155.

Reporting Hours: 10,000.

Cost to the Respondents: $266,000.

Federal Cost: $160,000.

Number of Forms: 1.

Form Number: EEOC Form 168A.

Abstract: Section 709 (c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the reporting requirements for elementary and secondary public school districts. The EEOC uses EEO–5 data to investigate charges of employment discrimination against elementary and secondary public school districts. The data also are used for research. The data are shared with the Department of Education (Office for Civil Rights) and the Department of Justice. Pursuant to Section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–5 data also are shared with state and local Fair Employment Practices Agencies (FEPAs).

Burden Statement: The estimated number of respondents included in the biennial EEO–5 survey is 7,155 public elementary and secondary school districts. The form is estimated to impose 10,000 burden hours biennially.

Dated: September 23, 2010.

For the Commission,

Jacqueline A. Berrien,

Chair.

[FR Doc. 2010–25891 Filed 10–13–10; 8:45 am]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Existing Collection; Emergency Extension

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of information collection—Emergency Extension Without Change: State and Local Government Information Report (EEO–4).

SUMMARY: In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it submitted to the Office of Management and Budget (OMB) a request for a 90-day emergency extension of the State and Local Government Information Report (EEO–4), to be effective after the current October 31, 2010 expiration date.

FOR FURTHER INFORMATION CONTACT: Ronald Edwards, Director, Program Research and Surveys Division, 131 M Street, NE., Room 4SW30F, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TTY).

SUPPLEMENTARY INFORMATION: The EEOC has collected information from State and local governments with 100 or more full-time employees since 1974 (biennially in odd-numbered years since 1993).

Overview of Information Collection

Collection Title: State and Local Government Information Report (EEO–4).

OMB—Number: 3046–0008.

Frequency of Report: Biennial.

Type of Respondent: State and local government jurisdictions with 100 or more employees.

Description of Affected Public: State and local governments excluding elementary and secondary public school districts.

Number of Responses: 13,456.

Reporting Hours: 44,719.

Cost to Respondents: $1,045,000.

Number of Forms: 1.

Form Number: EEOC Form 164.

Federal Cost: $187,500.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed, to preserve such records, and to produce reports as the Commission prescribes by regulation or order. Accordingly, the EEOC issued regulations prescribing the reporting requirements for State and local governments. State and local governments with 100 or more employees have been required to submit EEO–4 reports since 1974 (biennially in odd-numbered years since 1993). The individual reports are confidential.

EEO–4 data are used by the EEOC to investigate charges of discrimination against State and local governments and to provide information on the employment status of minorities and women. The data are shared with several other federal agencies. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, U.S.C. 2000e–8(d), as amended, EEO–4 data is shared with state and local Fair Employment Practices Agencies (FEPAs). Aggregated data are also used by researchers and the general public.

Burden Statement: The estimated number of respondents included in the EEO–4 survey is 9,000 state and local governments. These 9,000 jurisdictions file about 13,456 reports due to the requirement for some to file separate reports by function. The form is estimated to impose 44,719 burden hours biennially.

Dated: September 23, 2010.

For the Commission.

Jacqueline A. Berrien,

Chair.

[FR Doc. 2010–25887 Filed 10–13–10; 8:45 am]

BILLING CODE 6570–01–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 a.m. on Tuesday, October 19, 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.

DISCUSSION AGENDA:

Memorandum and resolution re: Restoration Plan and Notice of Proposed Rulemaking on Assessment Rates, Dividends and the Designated Reserve Ratio.

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: October 12, 2010.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2010–26090 Filed 10–12–10; 4:15 pm]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR Part 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

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

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

DATES: Comments must be submitted on or before December 13, 2010.

ADDRESSES: You may submit comments, identified by FR 2226, FR G–1, FR G–2, FR G–3, FR G–4, FR T–4, or FR U–1, by any of the following methods:

• *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at

http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.

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

• *E-mail: regs.comments@federalreserve.gov.* Include docket number in the subject line of the message.

• *FAX:* 202/452–3819 or 202/452–3102.

• *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

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

Additionally, commenters should send a copy of their comments to the OMB Desk Officer by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/boarddocs/reportforms/review.cfm* or may be requested from the agency clearance officer, whose name appears below.

Michelle Shore, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following report:

1. *Report title:* The Report of Net Debit Cap.

Agency form number: FR 2226.

OMB control number: 7100–0217.

Frequency: Annual.

Reporters: Depository institutions, Edge and agreement corporations, U.S. branches and agencies of foreign banks.

Estimated annual reporting hours: 1,298 hours.

Estimated average hours per response: 1.0 hour.

Number of respondents: 1,298.

General description of report: This information collection is mandatory (12 U.S.C. 248(i), 248–1, and 464). The information submitted by respondents for the payments system risk reduction program is exempt from disclosure under exemption (b)(4) of the Freedom of Information Act (FOIA), which exempts from disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." (5 U.S.C. 552 (b)(4)). In addition, information reported in connection with the second and third resolutions may be protected under Section (b)(8) of FOIA, to the extent that such information is based on the institution's CAMELS rating, and thus is related to examination reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (5 U.S.C. 552(b)(8)).

Abstract: Federal Reserve Banks collect these data annually to provide information that is essential for their administration of the Federal Reserve's Payments System Risk (PSR) policy. The reporting panel includes all financially healthy depository institutions with access to the discount window. The Report of Net Debit Cap comprises three resolutions, which are filed by a depository institution's board of directors depending on its needs. The first resolution is used to establish a de minimis net debit cap and the second resolution is used to establish a self-assessed net debit cap. The third resolution is used to establish simultaneously a self-assessed net debit cap and maximum daylight overdraft capacity. Copies of the model resolutions are located in Appendix B, of the PSR policy, that can be found at *http://www.federalreserve.gov/paymentsystems/psr_relpolicies.htm.*

2. *Report title:* Statement of Purpose for an Extension of Credit by a Creditor.

Agency form number: FR T–4.

OMB control number: 7100–0019.

Frequency: On occasion.

Reporters: Brokers and dealers.

Estimated annual reporting hours: 459 hours.

Estimated average hours per response: 10 minutes.

Number of respondents: 135.

General description of report: This information collection is mandatory and authorized by section 7 of the '34 Act (15 U.S.C. 78g). In addition, the FR T–4 is required by Section 220.6 of Regulation T (12 CFR 220.6). The FR T–4 data are not submitted to the Federal Reserve System and, as such, no issue of confidentiality arises.

Abstract: The Securities Exchange Act of 1934 authorizes the Federal Reserve to regulate securities credit extended by brokers and dealers, banks, and other lenders. The FR T–4 is a purpose statement for brokers and dealers. The purpose statement is a recordkeeping requirement for brokers and dealers to document the purpose of their loans secured by margin stock. Margin stock is defined as (1) stocks that are registered on a national securities exchange or any over-the-counter security designated for trading in the National Market System, (2) debt securities (bonds) that are convertible into margin stock, and (3) shares of most mutual funds.

Proposal to approve under OMB delegated authority the extension for three years, with clarification, of the following reports:

Report titles: Registration Statement for Persons Who Extend Credit Secured by Margin Stock (Other Than Banks, Brokers, or Dealers), Deregistration Statement for Persons Registered Pursuant to Regulation U, Statement of Purpose for an Extension of Credit Secured by Margin Stock by a Person Subject to Registration Under Regulation U; Annual Report, and Statement of Purpose for an Extension of Credit Secured by Margin Stock.

Agency form numbers: FR G–1, FR G–2, FR G–3, FR G–4, and FR U–1.

OMB control numbers: 7100–0011: FR G–1, FR G–2, and FR G–4; 7100–0018: FR G–3; and 7100–0115: FR U–1.

Frequency: FR G–1, FR G–2, FR G–3, and FR U–1 on occasion; and FR G–4: annual.

Reporters: Individuals and business.

Annual reporting hours: 1,207 reporting hours; 1,604 recordkeeping hours.

Estimated average hours per response: FR G–1, 2.5 hours; FR G–2, 15 minutes; FR G–3, 10 minutes; FR G–4, 2.0 hours; and FR U–1, 10 minutes.

Number of respondents: FR G–1, 25; FR G–2, 40; FR G–3, 284; FR G–4, 567; and FR U–1, 50.

General description of report: These mandatory information collections are authorized by section 7 of the '34 Act (15 U.S.C. 78g). In addition, the FR U–1 is required by Sections 221.3(c)(1)(i) and (2)(i) of Regulation U (12 C.F.R. 221.3(c)(1)(i) and (2)(i)), and the FR G–1, G–2, G–3, and G–4 are required by Sections 221.3(b)(1), (2), and (3), and

(c)(1)(ii) and (2)(ii) of Regulation U (12 C.F.R. 221.3(b)(1), (2), and (3), and (c)(1)(ii) and (2)(ii)). The information collected in the FR G–1 and the FR G–4 is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (6)). Confidentiality determinations would have to be made on a case by case basis. The FR G–2 does not collect confidential information. The FR U–1 and FR G–3 data are not submitted to the Federal Reserve System and, as such, no issue of confidentiality arises.

Abstract: The Securities Exchange Act of 1934 authorizes the Federal Reserve to regulate securities credit extended by brokers and dealers, banks, and other lenders. The purpose statements, FR U–1 and FR G–3, are recordkeeping requirements for brokers and dealers, banks, and other lenders, respectively, to document the purpose of their loans secured by margin stock. Margin stock is defined as (1) stocks that are registered on a national securities exchange or any over-the-counter security designated for trading in the National Market System, (2) debt securities (bonds) that are convertible into margin stock, and (3) shares of most mutual funds. Lenders other than brokers and dealers and banks must register and deregister with the Federal Reserve using the FR G–1 and FR G–2, respectively, and they must file the FR G–4 annual report while registered. The Federal Reserve uses the data to identify lenders subject to Regulation U, to verify their compliance with the regulation, and to monitor margin credit.

Current Actions: The Federal Reserve proposes minor clarifications to the FR G–1, FR G–3, and FR U–1 for consistency purposes. First, the definition of margin stock included in the instructions would be standardized. This would eliminate the confusion as to what securities could be defined as margin stock. Second, the lender's attestation in Part III of the FR G–3 would be modified to more closely parallel the FR U–1 attestation.

Board of Governors of the Federal Reserve System, October 8, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–25867 Filed 10–13–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than October 28, 2010.

A. Federal Reserve Bank of Atlanta (Clifford Stanford, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309:

1. *Stuart and Teresa Gibson, both of Canton, Georgia;* to acquire control of First Cherokee Bancshares, Inc., and thereby indirectly acquire control of First Cherokee State Bank, both of Woodstock, Georgia.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Robert A. Engen and Beverly J. Engen, both of Tolna, North Dakota, individually and as part of a group acting in concert with Steven R. Engen, Bismarck, North Dakota;* to retain and acquire control of Tolna Bancorp, Inc., and thereby indirectly retain and acquire control of The Farmers & Merchants State Bank of Tolna, both of Tolna, North Dakota.

Board of Governors of the Federal Reserve System, October 8, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–25857 Filed 10–13–10; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Meeting of the Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, October 21, 2010. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC, in Dining Room E on the Terrace Level of the Martin Building. For security purposes, anyone planning to attend the meeting should register no later than Tuesday, October 19, by completing the form found online at: *https://www.federalreserve.gov/secure/forms/cacregistration.cfm.*

Attendees must present photo identification to enter the building and should allow sufficient time for security processing.

The meeting will begin at 9 a.m. and is expected to conclude at 12:15 p.m. The Martin Building is located on C Street, NW., between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under various consumer financial services laws and on other matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

- *Proposed Rules Regarding Home Mortgage Transactions:* Members will discuss the Board's proposed rules to amend Regulation Z, which implements the Truth in Lending Act, to enhance consumer protection and improve disclosures for reverse mortgage transactions and other home mortgage loans.
- *Home Mortgage Disclosure Act (HMDA):* In the context of the Board's recent hearings on potential modifications to Regulation C, which implements HMDA, members will discuss the advantages and disadvantages of suggested changes to Regulation C, addressing the importance or utility of particular information in light of the purposes of HMDA and the burdens and possible privacy risks associated with collecting and reporting that information.
- *Community Reinvestment Act (CRA):* Members will discuss key insights from the recent hearings on modernizing the regulations that implement the CRA, considering issues such as how to update the regulations to reflect changes in the financial services industry, changes in how banking services are delivered to consumers today, and current housing and community development needs.
- *Foreclosure issues:* Members will discuss loss-mitigation efforts, including the Administration's Making Home Affordable program, neighborhood stabilization initiatives and challenges, and other issues related to foreclosures.

Reports by committees and other matters initiated by Council members also may be discussed.

Persons wishing to submit views to the Council on any of the above topics may do so by sending written

statements to Jennifer Kerslake, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Kerslake at 202–452–6470.

Board of Governors of the Federal Reserve System, October 8, 2010.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2010–25817 Filed 10–13–10; 8:45 am]

BILLING CODE P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed; Correction

AGENCY: Federal Maritime Commission.

Citation of Previous Notice of Agreements Filed: 75 FR 61757, October 6, 2010.

Previous Notice of Agreements: October 1, 2010.

Correction to the Notice of Agreements Filed: In the October 6, 2010 Notice announcing the filing of an amendment to Agreement 011611, the Amendment was erroneously numbered and described. The correct notice should read as follows:

Agreement No.: 011611–003.

Title: MOL/APL Slot Transfer Agreement.

Parties: American President Lines, Ltd.; APL Co. PTE, Ltd.; and Mitsui O.S.K. Lines, Ltd.

Filing Party: Eric C. Jeffrey, Esq.; Goodwin Procter LLP; 901 New York Ave., NW., Washington, DC 20001.

Synopsis: The amendment updates APL's corporate address.

Contact Person for More Information: Karen V. Gregory, Secretary, (202) 523–5725.

Rachel E. Dickon,

Assistant Secretary.

[FR Doc. 2010–25791 Filed 10–13–10; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[Docket 2010–0009, Sequence 4]

Temporary Duty (TDY) Travel Allowances

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Bulletin FTR 10–06.

SUMMARY: This bulletin provides guidance to employees of agencies subject to the FTR to enhance travel cost savings and reduce greenhouse gas emissions. This guidance will improve management of agency travel programs, save money on travel costs, better protect the environment, and conserve natural resources. Other agencies not subject to the FTR are also encouraged to follow this guidance and incorporate these strategies into their travel management policies, procedures, and activities related to official travel. Bulletin FTR 10–06 and all other Bulletins may be found at *http://www.gsa.gov/bulletins.*

DATES: The provisions of Bulletin FTR 10–06 are effective September 30, 2010.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Davis, Office of Governmentwide Policy (M), Office of Travel, Transportation, and Asset Management (MT), General Services Administration at (202) 208–7638 or via e-mail at *travelpolicy@gsa.gov*. Please cite Bulletin FTR 10–06.

Dated: September 30, 2010.

Janet C. Dobbs,

Acting Deputy Associate Administrator, Office of Travel, Transportation and Asset Management.

[FR Doc. 2010–25922 Filed 10–13–10; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–NEW; 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: ONC State HIE State Plans—OMB No. 0990–NEW—Office of the National Coordinator for Health Information Technology.

Abstract: The purpose of the State Health Information Exchange Cooperative Agreement Program, as authorized by Section 3013 of the American Recovery and Reinvestment Act is to provide grants to States and Qualified State Designated Entities is to facilitate and expand the secure, electronic movement and use of health information among organizations according to national recognized standards. Section 3013 requires States and Qualified State Designated Entities to have approved State Plans, consisting of strategic and operational components, before funding can be used for implementation activities. The State Plans must be submitted to the National Coordinator for Health Information Technology during the first year of the project period in order to receive implementation funding through the cooperative agreement. Annual updates to the State plans will be required in the three remaining project periods. The data collection will last four years, which is the duration of the project, and this request is for the data collection for the first three years of the project period.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
State Plans (Strategic and Operational).	State Government or Qualified State Designated Entity.	56	1	10,024	561,244
Subsequent updates to the State Plan.	State government or Qualified State Designated Entity.	56	1	500	28,000
Total	.....	.....	.....	.....	589,244

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–25836 Filed 10–13–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New; 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: ONC State HIE Performance Measures and Progress Report—OMB No. 0990–NEW-Office of the National Coordinator for Health Information Technology (ONC)

Abstract: The purpose of the State Health Information Exchange Cooperative Agreement Program, as authorized by Section 3013 of the American Recovery and Reinvestment Act is to provide grants to States and Qualified State Designated Entities is to facilitate and expand the secure, electronic movement and use of health information among organizations according to national recognized standards. As part of that project, States and Qualified State Designated Entities are required to provide biannual program progress reports and report on performance measures during the implementation phase of the cooperative agreement. This request is for those two data gathering requirements. The data collection lasts four years, which is the duration of the project, and this request is for the data collection for the first three years of the project period.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Evaluation performance measures ...	State government or Qualified State Designated Entity.	56	2	175	19,600
Program progress report	State government or Qualified State Designated Entity.	56	2	8	896
Total	.....	.....	.....	.....	20,496

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–25837 Filed 10–13–10; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Administration on Developmental Disabilities; Statement of Organization, Functions, and Delegations of Authority

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: Statement of Organizations, Functions, and Delegations of Authority The Administration for Children and Families has reorganized the Administration on Developmental Disabilities. This reorganization includes the organization and its substructure components as listed in this document. This reorganization eliminates the Office of Operations and Discretionary Grants, renames the Office of Programs to the Office of Program Support, and establishes a new office, Office of Innovation. The notice also serves to re-establish the Deputy Commissioner position.

FOR FURTHER INFORMATION CONTACT: Sharon Lewis, Administration on Developmental Disabilities Commissioner, Administration for Children and Families, 200 Independence Avenue, SW., Washington, DC 20201, 202–690–6590.

This notice amends Part K of the Statement of Mission, Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (HHS), Administration for Children and Families (ACF) as follows: Chapter KC, the Administration on Developmental Disabilities (ADD) (69 FR 56226–27), as last amended September 20, 2004.

I. Under Chapter KC, Administration on Developmental Disabilities, delete KC.10 Organization in its entirety and replace with the following:

KC.10 ORGANIZATION. The Administration on Developmental Disabilities is headed by a Commissioner who reports directly to the Assistant Secretary for Children and Families. The Administration on Developmental Disabilities consists of:

The Office of the Commissioner (KCA)
The Office of Program Support (KCB)
The Office of Innovation (KCC)

II. Under Chapter KC, Administration on Developmental Disabilities, delete KC.20 Functions, in its entirety and replace with the following:

KC.20 FUNCTIONS. A. The Office of the Commissioner provides executive leadership and management strategies for all components of the Administration on Developmental Disabilities, and serves as the principal advisor to the Assistant Secretary for Children and Families, the Secretary, and other elements of the Department for individuals with developmental disabilities and their families. The Office plans, coordinates and controls ADD policy, planning and management activities which include the development of legislative proposals, regulations and policy issuances for ADD. The Office provides executive direction, leadership, and management strategy to ADD's components and establishes goals and objectives for ADD programs. The Office manages the formulation and execution of the program and operating budgets; provides administrative, personnel and information systems support services; serves as the ADD Executive Secretariat controlling the flow of correspondence; and coordinates with appropriate ACF components in implementing administrative requirements and procedures. The Office also initiates, executes and supports the development of interagency, intergovernmental and public-private sector agreements, committees, task forces, commissions or joint-funding efforts as appropriate.

In coordination with the ACF Office of Public Affairs, the Office of the Commissioner develops a strategy for increasing public awareness of the needs of individuals with developmental disabilities, their families, and programs designed to address them. The Deputy Commissioner assists the Commissioner in carrying out the responsibilities of the Office.

B. The Office of Program Support is responsible for the coordination, oversight, management and evaluation of the State Councils on Developmental Disabilities, the Protection and Advocacy Systems, and the University Centers for Excellence in Developmental Disabilities grant programs as authorized by the Developmental Disabilities Assistance and Bill of Rights Act (DD Act). The Office is responsible for the development of procedures and performance standards that ensure compliance with the DD Act and that improve the outcomes of the programs in increasing the independence, productivity and community inclusion of persons with developmental disabilities as well as program outreach activities. The Office conducts routine and special analyses of state plans of State Councils on Developmental Disabilities, statement of goals and objectives of State Protection and Advocacy Systems, and five-year plans of the University Centers for Excellence in Developmental Disabilities, to assure consistent application of ADD program goals and objectives.

In addition, the Office of Program Support provides program development services, develops and initiates guidelines, policy issuances and actions with team participation by other components of ADD, ACF, HHS and other government agencies to fulfill the mission and goals of the DD Act, as amended. The Office ensures the dissemination of grantee results, including project results and information produced by ADD grantees, by coordinating with the Office of Innovation and the Office of the Commissioner for information sharing.

The Office of Program Support manages cross-cutting initiatives with other components of ADD, ACF, HHS and other government agencies to promote and integrate the grant programs into cross-agency and cross-disability efforts.

C. The Office of Innovation is responsible for the coordination, oversight, management and evaluation of the Projects of National Significance, Family Support, and the Direct Support Workers grant programs as authorized by the Developmental Disabilities Assistance and Bill of Rights Act (DD Act). The Office is responsible for the development of procedures that ensure compliance with the DD Act and that improve the outcomes of the programs, grants and contracts in increasing the independence, productivity and community inclusion of persons with developmental disabilities. The Office also ensures the dissemination of project results and information produced by ADD grantees.

The Office of Innovation also administers two formula grants under the Help America Vote Act (State and Local Grants for Election Assistance for Individuals with Disabilities and Grants to Protection and Advocacy Systems) that improve accessibility for individuals with the full range of disabilities, including the blind and visually impaired, to polling places, including the path of travel, entrances, exits and voting facilities. The Office also administers a training and technical assistance grant program under the Help America Vote Act that provides technical assistance to Protection and Advocacy Systems in their mission to

promote the full participation in the electoral process for individuals with the full range of disabilities, including registering to vote, casting vote, and accessing polling places.

The Office of Innovation originates and manages cross-cutting research, demonstration and evaluation initiatives with other components of ADD, ACF, HHS and other government agencies. The Office also coordinates information sharing and other activities related to national Developmental Disability program trends with other ACF programs and HHS agencies and studies, reviews and analyzes other federal programs providing services applicable to persons with developmental disabilities for the purpose of integrating and coordinating program efforts.

Dated: October 6, 2010.

David A. Hansell,

Acting Assistant Secretary for Children and Families.

[FR Doc. 2010–25919 Filed 10–13–10; 8:45 am]

BILLING CODE 4184–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities: Submission for OMB Review Comment Request: Supplemental Form to the Financial Status Report for All AoA Title III Grantees

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by November 15, 2010.

ADDRESSES: Submit written comments on the collection of information by fax 202–395–6974 to the OMB Desk officer for AoA, Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Heather Wiley, 202–357–3437.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance. The Supplemental form to the Financial Status Report for all AoA Title III Grantees provides an understanding of how projects funded by the Older Americans Act are being administered by grantees, in conformance with legislative requirements, pertinent Federal regulations and other applicable instructions and guidelines issues by the Administration on Aging (AoA). A template may be found on the AoA Web site at *http://www.aoa.gov/AoARoot/Grants/Reporting_Requirements/Formula_269.aspx*. This information will be used for Federal oversight of Title III Projects. AoA estimates the burden of this collection of information as follows: 56 State Agencies on Aging respond semiannually, which should be an average burden of 1 hour per State agency per submission for a total of 112 hours.

Dated: October 7, 2010.

Kathy Greenlee,

Assistant Secretary for Aging.

[FR Doc. 2010–25826 Filed 10–13–10; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Data System for Organ Procurement and Transplantation Network (42 CFR Part 121, OMB No. 0915–0184): Extension

The operation of the Organ Procurement and Transplantation Network (OPTN) necessitates certain recordkeeping and reporting requirements in order to perform the functions related to organ transplantation under contract to the Department of Health and Human Services (HHS). This is a request for an extension of the current recordkeeping and reporting requirements associated with the OPTN. These data will be used by HRSA in monitoring the contracts for the OPTN and the Scientific Registry of Transplant Recipients (SRTR) and in carrying out other statutory responsibilities. Information is needed to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, to ensure that all qualified entities are accepted for membership in the OPTN, and to ensure patient safety.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
121.3(b)(2) OPTN membership and application requirements	40	3	120	15	1, 800
121.3(b)(4) Appeal for OPTN membership	2	1	2	3	6
121.6(c) (Reporting) Submitting criteria for organ acceptance	900	1	900	0.5	450
121.6(c) (Disclosure) Sending criteria to OPOs	900	1	900	0.5	450
121.7(b)(4) Reasons for Refusal	900	38	34,200	0.5	17,100
121.7(e) Transplant to prevent organ wastage	260	1.5	390	0.5	195

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN—Continued

Section and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
121.9(b) Designated Transplant Program Requirements	10	1	10	5.0	50
121.9(d) Appeal for designation	2	1	2	6	12
Total	3,014		36,524		20,063

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 7, 2010.

Wendy Ponton,

Director, Office of Management.

[FR Doc. 2010–25843 Filed 10–13–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office at (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project Title: Evaluation of the National Healthy Start Program—[NEW]

Background: The National Healthy Start Program, funded through the Health Resources and Services Administration's (HRSA) Maternal and Child Health Bureau (MCHB), was developed in 1991 with the goal of reducing infant mortality disparities in high-risk populations through community-based interventions. The program originally began as a five-year demonstration project within 15 communities that had infant mortality rates 1.5 to 2.5 times above the national average.

The National Healthy Start Program has since expanded in size and mission to include 102 grantees across the nation, emphasizing a community-based, culturally competent approach to the delivery of care for women and their babies. MCHB seeks to conduct a cross-site evaluation of all Healthy Start grantees to document the accomplishments made by the National Healthy Start Program.

Purpose: The purpose of the survey is to collect consistent data on the services and activities of all 102 Healthy Start grantees. The data collected though this survey will be used to:

- Evaluate the grantees' performance and progress toward achieving short-term and long-term goals;
- Evaluate the relationship of performance and progress to implementation features of Healthy Start Program components;
- Assist MCHB in determining on a national level where technical assistance may be needed to improve program performance, set future priorities for program activities, and contribute to the overall strategic planning activities of MCHB; and
- Provide foundation data for future measurement of the initiative's long-term impact.

Respondents: The project directors of Healthy Start grants funded by HRSA will be the respondents for this data collection activity. The estimated response burden is as follows:

	No. of respondents	Responses per respondent	Total responses	Average hours per respondent	Total burden hours
Healthy Start Grantee Web Survey	102	1	102	4.0	408
Total	102	1	102	4.0	408

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the "attention of the desk officer for HRSA."

Dated: October 7, 2010.

Wendy Ponton,

Director, Office of Management.

[FR Doc. 2010–25841 Filed 10–13–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0500]

Draft Guidance for Industry: Early Clinical Trials With Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Early Clinical Trials with Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information" dated September 2010. The draft guidance provides investigational new drug application (IND) sponsors with recommendations on the submission of INDs for early clinical trials with live biotherapeutic products (LBPs).

DATES: Although you can comment on any guidance at any time (21 CFR 10.115(g)(5)), to ensure that the agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by December 13, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. *See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

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.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Chacko, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Industry: Early Clinical Trials with Live Biotherapeutic Products: Chemistry, Manufacturing, and Control Information" dated September 2010. The draft guidance provides IND sponsors with recommendations on the submission of INDs for early clinical trials with LBPs.

Regulations in part 312 (21 CFR part 312) require sponsors who wish to study LBPs in humans to submit an IND to FDA, unless the sponsor falls into one of the exemptions for clinical investigations found under § 312.2(b). The general principles underlying the IND submission and the general requirements for an IND's content and format are contained in §§ 312.22 and 312.23, respectively. This draft guidance focuses on the chemistry, manufacturing, and control information that should be provided in an IND in order to meet the requirements under § 312.23 for early clinical trials evaluating LBPs. This draft guidance is applicable to all INDs of LBPs, whether clinical trials are conducted commercially, in an academic setting, or otherwise (§ 312.2).

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. The collections of information in 21 CFR part 312 have been approved under the Office of Management and Budget (OMB) control number 0910–0014.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. 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.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: October 7, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–25850 Filed 10–13–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0503]

Draft Guidance for Industry on Investigational New Drug Applications—Determining Whether Human Research Studies Can Be Conducted Without an Investigational New Drug Application; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Investigational New Drug Applications (INDs)—Determining Whether Human Research Studies Can Be Conducted Without an IND." This draft guidance is intended to assist clinical investigators, sponsors, and sponsor-investigators in determining whether planned human research studies must be conducted under an investigational new drug application (IND). The guidance describes the basic criteria for when an IND is required, describes specific situations in which an IND is not required, and discusses a range of issues that, in FDA's experience, have been the source of confusion or misperceptions about the application of the IND requirements.

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 comments on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by January 12, 2011. Submit either electronic or written comments concerning proposed collection of information by December 13, 2010.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002, or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation Research (CBER), Food and Drug Administration, 1401

Rockville Pike, Suite 200N, Rockville, MD 20852–1448. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

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.

FOR FURTHER INFORMATION CONTACT:

Sandy Benton, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4204, Silver Spring, MD 20993–0002, 301–796–1077, or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), 1401 Rockville Pike, Suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Investigational New Drug Applications (INDs)—Determining Whether Human Research Studies Can Be Conducted Without an IND.'' FDA receives frequent inquiries from external constituents, in particular the academic research community (*e.g.,* clinical investigators, Institutional Review Boards (IRBs)) and the pharmaceutical industry, concerning whether various types of human research studies can be conducted without an IND. Because of the volume and nature of the inquiries, this guidance is intended to be a resource to assist potential sponsors and clinical investigators in determining whether an IND should be submitted for their planned research. Generally, clinical investigations in which a drug is administered to study subjects must be conducted under an IND as required by part 312 (21 CFR part 312). This guidance explains the general requirements for when an IND is needed, describes the types of clinical studies that are exempt by regulation from the IND requirements, and addresses a range of issues that commonly arise in inquiries to FDA concerning the application of the IND requirements.

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 determining whether human research studies can be conducted without an IND. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Investigational New Drug Applications (INDs)—Determining Whether Human Research Studies Can Be Conducted Without an IND.

Description: The draft guidance would assist clinical investigators, sponsors, and sponsor-investigators in determining whether human research studies must be conducted under an IND as described in part 312, *Investigational New Drug Application.* The draft guidance describes the basic criteria for when an IND is required, specific situations in which an IND is not required, and a range of issues that have been the source of confusion or misperceptions about the application of the IND regulations. Section VIII of the draft guidance, ''Process for Addressing Inquiries Concerning the Application of the IND Requirements,'' provides a process for seeking advice from FDA concerning the application of the IND regulations to a planned clinical investigation. Under § 312.2(e), FDA, on request, will advise on the applicability of part 312 to a planned clinical investigation.

Part 312 contains an information collection that has been approved by OMB under OMB control number 0910–0014, and this approval would extend to the recommendations in the draft guidance. However, requests for FDA advice, under § 312.2(e), on the application of the IND regulations to a planned clinical investigation has not been part of this approval by OMB. Therefore, we are requesting OMB approval of the information collection in Section VIII of the draft guidance. As indicated in table 1 of this document, based on FDA's experience with the requests it has received for advice on the application of the IND regulations to planned clinical investigations, we estimate that we will receive annually approximately 45 formal inquiries as described in Section VIII of the draft guidance from approximately 20 sponsors and/or investigators, and approximately 110 informal inquiries as described in Section VIII from approximately 40 sponsors and/or investigators. We also estimate that it will take approximately 8 hours to prepare and submit each formal inquiry and approximately 30 minutes to prepare and submit each informal inquiry.

FDA requests comments on this analysis of information collection burdens:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Formal Inquiry	20	2.25	45	8 hours	360
Informal Inquiry	40	2.75	110	30 minutes	55
Total					415

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding the draft guidance, including comments regarding proposed collection of information. It is only necessary to send one set of comments. It is no longer necessary to send two copies of any 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.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm,* or *http://www.regulations.gov.*

Dated: October 6, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–25851 Filed 10–13–10; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2009–0018]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Certified Cargo Screening Program

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-Day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0053, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collections include: (1) Applications from entities that wish to become Certified Cargo Screening Facilities (CCSF) or operate as a TSA-approved validation firm; (2) personal information to allow TSA to conduct security threat assessments on key individuals employed by the CCSFs and validation firms; (3) implementation of a standard security program or submission of a proposed modified security program; (4) information on the amount of cargo screened; (5) recordkeeping requirements for CCSFs and validation firms; and (6) submission of validation reports to TSA. TSA is seeking the renewal of the ICR for the continuation of the program in order to secure passenger aircraft carrying cargo by the deadlines set out in the Implementing Recommendations of the 9/11 Commission Act of 2007.

DATES: Send your comments by December 13, 2010.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA Paperwork Reduction Act (PRA) Officer, Office of Information Technology (OIT), TSA–40, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6040.

FOR FURTHER INFORMATION CONTACT: Please email *TSA.PRA@dhs.gov* with questions or comments.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0053, Certified Cargo Screening Program, 49 CFR Parts 1515, 1520, 1522, 1540, 1544, 1546, 1548, and 1549

TSA is seeking renewal of an expiring collection of information. Section 1602 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (Pub. L. 110–53, 121 Stat. 266, 278, August 3, 2007) requires the development of a system to screen 50 percent of the cargo transported on a passenger aircraft by February 2009, and to screen 100 percent of such cargo by August 2010. In September 2009, TSA issued an interim final rule (IFR) amending 49 CFR to implement this statutory requirement. See 74 FR 47672 (September 16, 2009). TSA received approval from OMB for the collections of information contained in the IFR. TSA now seeks to extend this approval from OMB. Accordingly, TSA must proceed with this ICR for this program in order to continue to meet the Congressional mandate. The ICR will allow TSA to collect several categories of information as explained below.

Data Collection

TSA certifies qualified facilities as CCSFs. Companies seeking to become CCSFs are required to submit an application to TSA at least 90 days before the intended date of operation. All CCSF applicants submit applications and related information either electronically through email or through the online Air Cargo Document

Management System. TSA also accepts applications by postal mail. Once TSA approves the application, TSA allows the regulated entity to operate as a CCSF in accordance with a TSA-approved security program. Prior to certification, the CCSF must also submit to an assessment by a TSA-approved validator or TSA.

TSA also requires CCSFs and validation firms to accept and implement a standard security program provided by TSA or to submit a proposed modified security program to the designated TSA official for approval.

TSA requires CCSF applicants to ensure that individuals performing screening and related functions under the IFR have successfully completed a security threat assessment (STA) conducted by TSA. In addition, Security Coordinators and their alternates for CCSFs must undergo STAs. CCSFs must submit personally identifiable information on these individuals to TSA so that TSA can conduct an STA.

CCSF facilities must provide information on the amount of cargo screened and other cargo screening metrics at an approved facility. CCSFs must also maintain screening, training, and other security-related records of compliance with the IFR and make them available for TSA inspection.

A firm interested in operating as a TSA-approved validation firm must also apply for TSA approval. Thus, this ICR also covers the following additional collections for validation firms: (1) Applications from entities seeking to become TSA-approved validation firms; (2) personal information so individuals performing, assisting or supervising validation assessments, and security coordinators can undergo STAs; (3) implementation of a standard security program provided by TSA or submission of a proposed modified security program; (4) recordkeeping requirements, including that validation firms maintain assessment reports; and (5) submission of validation reports conducted by validators in TSA-approved validation firms to TSA.

The forms used for this collection of information include the CCSF Facility Profile Application (TSA Form 419B), CCSF Principal Attestation (TSA Form 419D), Security Profile (TSA Form 419E), Security Threat Assessment Application (TSA Form 419F), TSA Approved Validation Firms Application (TSA Form 419G), Aviation Security Known Shipper Verification (TSA Form 419H), and the Cargo Reporting Template.

Estimated Burden Hours

As noted above, TSA has identified several separate information collections under this ICR. These collections will affect an estimated total of 16,989 unique respondents, including the CCSP pilot respondents, over the three years of the PRA analysis. Collectively, these information collections represent an estimated average of 723,312 responses annually, for an average annual hour burden of 718,255 hours.

1. *CCSF Application.* TSA estimates that it will receive 22,541 applications in 3 years, for an average of 7,514 applications annually and that these applications will require an average of 2 hours each to complete, resulting in an annual burden of 15,028 hours (7,514 × 2).

2. *Validation Firm Applications.* TSA estimates that it will receive 83 applications in 3 years, for an average of 28 applications annually. Each application will require an average of 30 minutes to complete, resulting in an annual burden of 14 hours (28 × 0.5) on the validation firms.

3. *STA Applications.* All CCSP participants subject to 49 CFR parts 1544, 1546, 1548, and 1549, as well as TSA-approved validation firms, will be required to have certain employees undergo security threat assessments (STAs). TSA estimates it will receive a total of 937,300 applications in 3 years, for an average of 312,433 applications annually. STA application requirements result in an annual burden of approximately 78,108 (312,433 × 0.25).

4. *Security Programs.* TSA estimates that a total 16,989 CCSFs and validation firms will be required to maintain and update their security programs. Each firm will devote approximately 4 hours each annually, beginning in the second year, updating their security programs. TSA estimates 31,589 security program updates in the first three years for an average of 10,530 updates per year. The annual hour burden is 42,119 (10,530 × 4).

5. *Recordkeeping requirements.* All CCSFs and validation firms, or 16,989, will be required to maintain records of compliance with the IFR. TSA estimates a time burden of approximately five minutes annually per employee who is required to have an STAto file training records and other records of compliance. This includes validation firm filings of validation assessment reports, resulting in a total of 937,300 record updates in the first three years for an average of 312,433 record updates per year. TSA estimates an annual burden of approximately 25,932 hours (312,433 × 0.083).

6. *Validation Assessment Reports.* TSA estimates it will take individual validators four hours to write up a validation report. In addition, TSA estimated this will result in 5,635 validations being completed annually, resulting in an annual burden of 22,541 hours (5.635 × 4).

7. *Cargo Reporting.* TSA estimates that all CCSFs will complete monthly cargo volume reports at an estimated time of one hour per week. The average annual responses, based on one response per firm per month, are 67,624 (5,635 × 12). The estimated annual burden is 293,037 hours (5,646 × 52).

Issued in Arlington, Virginia, on October 7, 2010.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2010–25802 Filed 10–13–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2004–19515]

Intent To Request Renewal From OMB of One Current Public Collection of Information: Air Cargo Security Requirements

AGENCY: Transportation Security Administration, DHS.

ACTION: 60-day notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved Information Collection Request (ICR), OMB control number 1652–0040, abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. The collections of information that make up this ICR involve five broad categories affecting airports, passenger aircraft operators, foreign air carriers, indirect air carriers operating under a security program, and all-cargo carriers: Security programs, security threat assessments (STA), known shipper data via the Known Shipper Management System (KSMS), cargo screening reporting, and evidence of compliance recordkeeping. TSA seeks continued OMB approval in order to secure passenger aircraft carrying cargo as authorized in the Aviation and Transportation Security Act.

DATES: Send your comments by December 13, 2010.

ADDRESSES: Comments may be e-mailed to *TSAPRA@dhs.gov* or delivered to the TSA Paperwork Reduction Act (PRA) Officer, Office of Information Technology (OIT), TSA–40, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6040.

FOR FURTHER INFORMATION: Please e-mail *TSA.PRA@dhs.gov* with questions or comments.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation is available at *http://www.reginfo.gov.* Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(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 using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

OMB Control Number 1652–0040 Air Cargo Security requirements, 49 CFR parts 1540, 1542, 1544, 1546, and 1548. TSA is seeking renewal of an expiring collection of information. Congress set forth in the Aviation and Transportation Security Act (ATSA), Public Law 107–71, two specific requirements for TSA in the area of air cargo security: (1) To provide for screening of all property, including U.S. mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft; and (2) to establish a system to screen, inspect, report, or otherwise ensure the security of all cargo that is to be transported in all-cargo aircraft as soon as practicable. In the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110–53, Congress requires that 50 percent of cargo transported on passenger aircraft be screened by February 2009, and 100 percent of such cargo be screened by August 2010. Collection of information associated with the 9/11 Act requirements fall under OMB control number 1652–0053.

While aviation security requirements have greatly reduced the vulnerability of the air cargo system, TSA, in cooperation with industry stakeholders, identified additional gaps in the existing cargo security requirements that must be filled to reduce the likelihood of cargo tampering or unauthorized access to the aircraft with malicious intent. TSA must proceed with this ICR for this program in order to meet the Congressional mandates and current regulations (49 CFR 1542.209, 1544.205, 1546.205, and part 1548) that enable them to accept, screen, and transport air cargo. The uninterrupted collection of this information will allow TSA to continue to ensure implementation of these vital security measures for the protection of the traveling public.

Data Collection

This information collection requires the "regulated entities," which may include passenger and all-cargo aircraft operators, foreign air carriers, and indirect air carriers (IACs), to implement a standard security program or to submit modifications to TSA for approval, and update such programs as necessary. The regulated entities must also collect personal information and submit such information to TSA so that TSA may conduct security threat assessments (STA) on individuals with unescorted access to cargo. This includes each individual who is a general partner, officer or director of an IAC or an applicant to be an IAC, and certain owners of an IAC or an applicant to be an IAC; and any individual who has responsibility for screening cargo under 49 CFR parts 1544, 1546, or 1548. Aircraft operators and foreign air carriers must report the volume of accepted and screened cargo transported on passenger aircraft. Further, TSA will collect identifying information for both companies and individuals whom aircraft operators, foreign air carriers, and IACs have qualified to ship cargo on passenger aircraft, also referred to as "known shippers." This information is primarily collected electronically via the Known Shipper Management System (KSMS). Whenever the information cannot be entered on KSMS, the regulated entity must conduct a physical visit of the shipper using the Aviation Security Known Shipper Verification Form and subsequently enter that information into KSMS. These regulated entities must also maintain records including records pertaining to security programs, training, and compliance. The forms used in this collection of information include the Aviation Security Known Shipper Verification Form, Cargo Reporting Template, and the Security Threat Assessment Application.

Estimated Burden Hours

The hour burden associated with the initial submission of security programs is estimated by TSA to be 4 hours for each of the 152 new aircraft operator, foreign air carrier and IAC average annual regulated entites for an average annual hour burden of 606 hours.

The hour burden associated with the security program updates is estimated by TSA to be 4 hours for each of the 4,509 aircraft operators, foreign air carriers, and IACs for an average annual hour burden of 18,036 hours. TSA estimates one percent of IACs (42) will file an appeal at 5 hours per appeal for an average annual hour burden of 210 hours.

For the STA requirement, based on a 15-minute estimate for each of the average 40,003 annual responses, TSA estimates that the average annual burden will be 10,001 hours.

For the Known Shipper Management System (KSMS), given that the IAC or aircraft operator must input a name, address, and telephone number, TSA estimates it will take 2 minutes for the 792,000 electronic submissions for a total annual burden of 26,400 hours. Also for KSMS, TSA estimates it will take one hour for the 8,000 manual submissions for a total annual burden of 8,000 hours.

TSA estimates out of the 480 total aircraft operators and foreign air carriers impacted by TSA regulations, 135 aircraft operators and foreign air carriers will submit cargo screening reporting information because not all aircraft operators and foreign air carriers transport cargo. TSA estimates this will take an estimated one hour per week (52 hours per year) for a total average annual burden of 6,994 hours. For recordkeeping, based on a 5-minute estimate for each of the 40,003 average annual responses, TSA estimates that the total average annual burden will be 3,320 hours.

Issued in Arlington, Virginia, on October 7, 2010.

Joanna Johnson,

TSA Paperwork Reduction Act Officer, Office of Information Technology.

[FR Doc. 2010–25803 Filed 10–13–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5382–N–15]

Notice of Proposed Information Collection for Public Comment on the Follow-Up Survey and Data Collection Guide for the Evaluation of the Rapid Re-Housing for Homeless Families Demonstration Program

AGENCY: Office of Policy Development and Research, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 13, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department ofHousing and Urban Development, 451 7th Street, SW., Room 8234, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Anne Fletcher at (202) 402–4347 (this is not a toll-free number). Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Fletcher.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology that will reduce burden, (e.g., permitting electronic submission of responses).

This Notice also lists the following information:

Title of Proposal: Evaluation of the Rapid Re-housing for Homeless Families Demonstration Program.

OMB Control Number: XXXX—pending.

Description of the need for the information and proposed use: The Participation Agreement (for the collection of informed consent and contact information), the 6-month Tracking Letter, and the Participant Follow-up Survey Instruments are all necessary to conduct the evaluation of the Rapid Re-Housing for Families Demonstration Program.

The FY 2008 budget for the U.S. Department of Housing and Urban Development (H.R. 2764) included a $25 million set-aside to implement a Rapid Re-housing for Families Demonstration (RRHD) Program "expressly for the purposes of providing housing and services to homeless families." Also included in the legislation was a requirement that there be an evaluation of the demonstration program "in order to evaluate the effectiveness of the rapid re-housing approach in addressing the needs of homeless families." These instruments establish the research foundation on which the Department can meet that direction. They will permit the research team to identify a cohort of RRHD program participants and to track and measure the outcomes of participants 12 months after program completion.

Members of affected public: Households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

ESTIMATED RESPONDENT BURDEN HOURS AND COSTS

Form	Respondent sample	Number of respondents	Average time to complete (minimum, maximum) in minutes	Frequency	Total burden (hours)
Contact Information	All enrolled families (N=1,200)	1,200	5 (3–7)	1	100
Tracking Information	All enrolled families (N=1,200)	1,200	2 (1–3)	1	40
Follow-up Survey	All enrolled families (N=1,200)	1,200	25 (20–30)	1	500
Total Burden Hours					640

Respondent's obligation: Voluntary.

Status of the proposed information collection: Pending OMB approval.

Authority: Title 13 U.S.C. Section 9(a), and Title 12, U.S.C., Section 1701z–1 *et seq.*

Dated: October 8, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–25903 Filed 10–13–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5377–N–04]

Notice of Proposed Information Collection Comment Request Housing Trust Fund

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* December 13, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB

Control Number and should be sent to: Colette Pollard, Departmental Paperwork Reduction Act Compliance Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *colette.pollard@hud.gov* or telephone (202) 402–3400.

FOR FURTHER INFORMATION CONTACT: Marcia Sigal, Director, Program Policy Division, Office of Affordable Housing Programs, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2684 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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; (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 the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Trust Fund.

OMB Control Number, if applicable: 2506–Pending.

Description of the need for the information and proposed use: Under Section 1338 of the Federal Housing Enterprises Financial Safety and Soundness Act of Public Law 101–625 (104 Stat. 4079), Title II of the Cranston-Gonzalez National Affordable Housing Act of 1992 and by the Federal Housing Finance Regulatory Reform Act of 2008, as amended, established the Housing Trust Fund (HTF) Program Rule. In accordance with the statute the Act requires a percentage of the unpaid principal balance of total new business for Freddie Mac and Fannie Mae to be allocated as a dedicated source of annual funding for the HTF, unless allocations are suspended by the Director of the Federal Housing Finance Agency. HUD will allocate HTF funds by formula to eligible states or state-designated entities to increase and preserve the supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing for extremely low-income and very low-income households. The amount of funds available by the formula is the balance remaining after providing for other purposes authorized by Congress, in accordance with the Act and Appropriations. At least 80% of the funds must be spent on rental housing and no more than 10% may be spent to assist first-time homebuyers. The remaining 10% may be used for administration. States may choose to administer HTF funds directly or may assign all or part of the funds to subgrantees to administer its allocation, such as a state housing finance agency or units of local government. States may use HTF funds for the production, preservation, and rehabilitation of affordable rental housing and affordable housing for homeownership through the acquisition, new construction, reconstruction, or rehabilitation of non-luxury affordable housing with suitable amenities. States and/or designated entities will ensure housing compliance with title VI of the Civil Rights Act of 1964, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Section 109 of Title I of the Housing and Community Development Act of 1974, HUD's implementing regulations, and promotion of greater choice of housing opportunities.

Under the HTF Statute, HUD will collect data and produce reports on the Department and on HTF program participants. Information on assisted properties, as well as the owners or tenants of the properties, is needed to determine compliance with the statutory requirements.

Agency form numbers, if applicable: Form HUD–40101.

Members of affected public: State, Local or Tribal Gov.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents: 56.

Frequency of Responses: Annually.

Hours per Response: 2.19.

Estimated Total Number of Burden Hours: 28,089.

Respondent's Obligation to Respond: Required to Obtain Benefits.

Status of the proposed information collection: Pending OMB Approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: July 30, 2010.

Jeanne Van Vlandren,

General Deputy Assistant Secretary for Community Planning and Development (Acting).

[FR Doc. 2010–25906 Filed 10–13–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–C–18]

Notice of Availability: Notice of Funding Availability (NOFA) for HUD's Fiscal Year (FY) 2010 Healthy Homes Production; Technical Correction

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its Web site of a technical correction that corrects the form that is to be used in responding to a rating factor in the notice of funding availability for the FY2010 Healthy Homes Production Grant Program. The technical correction, which provides information regarding the application process, funding criteria and eligibility requirements, can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do.* A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm.* The Catalogue of Federal Domestic Assistance (CFDA) number for the Healthy Homes Production Grant Program is 14.913. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: For information concerning the FY2010 Healthy Homes Production Grant Program you may contact Michelle M. Miller, Director, Programs Division, Office of Healthy Homes and Lead Hazard Control at (202) 402–5769 (this is not a toll-free number) or by e-mail at *Michelle.M.Miller@HUD.gov*. Persons with speech or hearing impairments may access this telephone number via TTY by calling the toll-free Federal Relay Service during working hours at 800–877–8339.

Dated: October 8, 2010.

Barbara S. Dorf,

Director, Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2010–25909 Filed 10–13–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5415–N–15]

Notice of Availability: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 2010 Family Unification Program (FUP)

AGENCY: Office of the Chief of the Human Capital Officer, HUD.

ACTION: Notice.

SUMMARY: HUD announces the availability on its website of the applicant information, submission deadlines, funding criteria, and other requirements for the FY2010 Family Unification Program. This Notice of Funding Availability (NOFA) announces the availability of approximately $15 million for new incremental voucher assistance to provide adequate housing as a means to promote family unification through the FUP. In accordance with the Consolidated Appropriations Act 2010, this funding must be provided to Public Housing Agencies with demonstrated experience and resources for supportive services, as evidenced by the executed Memorandum of Understanding (MOU) with the Public Child Welfare Agency (PCWA).

The notice providing information regarding the application process, funding criteria and eligibility requirements can be found using the Department of Housing and Urban Development agency link on the Grants.gov/Find Web site at *http://www.grants.gov/search/agency.do*. A link to Grants.gov is also available on the HUD Web site at *http://www.hud.gov/offices/adm/grants/fundsavail.cfm*. The Catalogue of Federal Domestic Assistance (CFDA) number for the Family Unification Program is 14.880. Applications must be submitted electronically through Grants.gov.

FOR FURTHER INFORMATION CONTACT: Questions regarding specific program requirements should be directed to Amaris Rodriguez at (202) 708–0477 or by e-mail at *amaris.rodriguez@hud.gov*. Program staff will not be available to provide guidance on how to prepare the application. Questions regarding the 2010 General Section should be directed to the Office of Grants Management and Oversight at (202) 708–0667 or the NOFA Information Center at 800–HUD–8929 (toll free). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800–877–8339.

Dated: October 8, 2010.

Barbara S. Dorf,

Director, Office of Departmental Grants Management and Oversight, Office of the Chief of the Human Capital Officer.

[FR Doc. 2010–25907 Filed 10–13–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 5451–N–01]

Notice of Web Availability and Opportunity for Public Comment for Revisions to the Section 8 Renewal Policy Guide Book

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner.

ACTION: Notice.

SUMMARY: Through this notice, HUD announces the availability on its Web site of revisions to the Section 8 Renewal Policy Guide Book, which is HUD's comprehensive guidance for renewing expiring Section 8 contracts. In addition, HUD will be accepting and considering comments from the public, which should be submitted in accordance with the instructions in the **ADDRESSES** section of this notice. HUD will publish the draft changes to the Guide Book on its Web site, along with a transmittal notice summarizing the changes, at *http://www.hud.gov/offices/hsg/mfh/mfhsec8.cfm* during the public comment period.

Comment Due Date: November 15, 2010.

ADDRESSES: Interested persons are invited to submit comments on this interim rule to the Department of Housing and Urban Development, Attention: Section 8 Renewal Guide, 451 7th Street, SW., Room 6134, Washington, DC 20410. Communications must refer to the above docket number and title. There are two methods of submitting public comments:

1. Submission of Comments by Mail. Comments may be submitted by mail posted by the due date to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. Submission of comments by e-mail. Comments may be submitted by e-mail to *Section8RenewalGuide@hud.gov*.

Facsimile (Fax) comments will not be accepted. All comments must be submitted by one of the two methods stated above.

All communications must refer to the above docket number and title. Comments must specifically identify the page and paragraph number to which they refer.

FOR FURTHER INFORMATION CONTACT: Kerry Mulholland, Office of Multifamily Housing Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 6128, Washington, DC 20410, telephone 202–708–3000, Ext. 2649.

Dated: October 7, 2010.

Carol J. Galante,

Deputy Assistant Secretary for Multifamily Housing Programs.

[FR Doc. 2010–25904 Filed 10–13–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2010–N226; 96300–1671–0000–P5]

Endangered Species; 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. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless a Federal permit is issued that allows such activities. The ESA requires that we invite public comment before issuing these permits.

DATES: We must receive comments or requests for documents or comments on or before November 15, 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 e-mail 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.*), require that we invite public comment before final action on these permit applications.

III. Permit Applications

A. Endangered Species

Applicant: Stephen Dunbar, Loma Linda University, Loma Linda, CA; PRT–15386A

The applicant requests a permit to import biological specimens from wild sea turtles (*Eretmochelys imbricata, Chelonia mydas,* and *Lepidochelys olivacea*) from both coasts of Honduras for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 1-year period.

Applicant: The Phoenix Zoo, Phoenix, AZ; PRT–22630A

The applicant requests a permit to import biological specimens from captive-bred Arabian oryx (*Oryx leucoryx*) from Jordan for the purpose of scientific research. This notification covers activities to be conducted over a 1-year period.

Applicant: Busch Gardens, Tampa, FL; PRT–22130A

The Fish and Wildlife Service is extending the comment period for this application. A notice of receipt of this application for a permit was published in the **Federal Register** on October 7, 2010 (75 FR 62139). We are extending the comment period because the number of cheetah (*Acinonyx jubatus*) is actually seven, not six.

Applicant: Hawthorn Corporation, Grayslake, IL; PRT—058670, 068239, 068240, 13186A, 13187A, and 13188A

The applicant requests the re-issuance of three permits and the issuance of three new permits for the export/re-export and re-import of tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species. The permit numbers and animals are [058670, Xena; 068239, Sharm; 068240, Jeeva; 13186A, Fatima; 13187A, SahiB2; 13188A, Mausumi]. This notification covers activities to be conducted by the applicant over a 3-year period and the import of any potential progeny born while overseas.

Applicant: Ronald Mika, Alpine, UT; PRT–23733A

The applicant requests a permit to import a 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.

Dated: October 8, 2010.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2010–25856 Filed 10–13–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Fall 2010 Meeting of the National Preservation Technology and Training Board

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: National Preservation Technology and Training Board—National Center for Preservation Technology and Training: Meeting Notice.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix (1988)), that the National Preservation Technology and Training Board (NPTT Board) of the National Center for Preservation Technology and Training, National Park Service, will meet on Tuesday and Wednesday, October 26–27, 2010 in Austin, Texas.

The NPTT Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training (NCPTT) in compliance with Section 404 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470x–2(e)).

The NPTT Board will meet at the Embassy Suites Hotel Austin Downtown/Town Lake at 300 South Congress Avenue, Austin, TX 78704—telephone (512) 469–9000. The meeting will run from 9 a.m. to 5 p.m. on October 26 and from 9 a.m. to 12 p.m. on October 27.

The NPTT Board's meeting agenda will include: Review and comment on NCPTT FY2010 accomplishments and operational priorities for FY2011; FY2011 National Center budget and initiatives; the National Center's Sustainability and Preservation initiative; "greening" of historic buildings; funding for research; and preservation training programs.

The NPTT Board meeting is open to the public. Facilities and space for accommodating members of the public are limited; however, guests will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning any of the matters to be discussed by the NPTT Board.

DATES: The meeting dates are: October 26, 2010, 9 a.m. to 5 p.m. and October 27, 2010, 9 a.m. to 12 p.m., Austin, TX.

ADDRESSES: The meeting location is: Suites Hotel Austin Downtown/Town Lake at 300 South Congress Avenue, Austin, TX 78704.

SUPPLEMENTARY INFORMATION: Anyone interested may request more information concerning this meeting from, or submit written statements to: Mr. Kirk A. Cordell, Executive Director, National Center for Preservation Technology and Training, National Park Service, U.S. Department of the Interior, 645 University Parkway, Natchitoches, LA 71457—telephone (318) 356–7444. In addition to U.S. Mail or commercial delivery, written comments may be sent by fax to Mr. Cordell at (318) 356–9119. 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.

Minutes of the meeting will be available for public inspection no later than 90 days after the meeting at the office of the Executive Director, National Center for Preservation Technology and Training, National Park Service, U.S. Department of the Interior, 645 University Parkway, Natchitoches, LA 71457—telephone (318) 356–7444.

Dated: September 14, 2010.

Kirk A. Cordell,

Executive Director, National Center for Preservation Technology and Training, National Park Service.

[FR Doc. 2010–25831 Filed 10–13–10; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA–48668, 49502, 49503, 49504; L51010000 FX0000 LVRWB09B2400 LLCAD09000]

Notice of Availability of the Record of Decision for the Ivanpah Solar Electric Generating System Project and Approved Plan Amendment to the California Desert Conservation Area Plan, San Bernardino County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD)/Approved Plan Amendment (PA) to the California Desert Conservation Area (CDCA) Plan for the Ivanpah Solar Electric Generating System (ISEGS) Project located in San Bernardino County, California. The Secretary of the Interior signed the ROD on October 7, 2010 which constitutes the final decision of the Department. The ROD/Approved PA are effective immediately.

ADDRESSES: Copies of the ROD/Approved PA have been sent to affected Federal, state, and local government agencies and to other stakeholders and are available upon request at the BLM's Needles Field Office, 1303 South Highway 95, Needles, California 92363 or via the Internet at: *http://www.blm.gov/ca/st/en/fo/needles/nefo_nepa.html.*

FOR FURTHER INFORMATION CONTACT: Tom Hurshman, Project Manager, at 2465 South Townsend Ave., Montrose, Colorado 81401; *phone:* (970) 240–5345; *e-mail: caisegs@blm.gov.*

SUPPLEMENTARY INFORMATION: The ISEGS Project was proposed by Solar Partners I, Solar Partners II, Solar Partners IV, and Solar Partners VIII, LLC all subsidiaries of Bright Source Energy (BSE) who filed four right-of-way (ROW) applications on public land for development of the thermal solar power tower project. The Selected Alternative approved in the ROD is the Mitigated Ivanpah 3 Alternative that would generate 370 MW of electricity and would be located on approximately 3,472 acres of public land. The BLM will authorize the project through the issuance of four ROW grants pursuant to Title V of the Federal Land Policy and Management Act. The project site is located entirely on public land administered by the BLM, approximately 4.5 miles south of Primm, Nevada in San Bernardino County, California.

The CDCA Plan Amendment/Final Environmental Impact Statement was published on August 6, 2010 (75 FR 47619), initiating a 30-day protest period and concurrent 30-day comment period. Six protests of the proposed plan amendment and 18 comments on the project were received. Public comments and protests did not significantly change the decisions in the ROD/Approved PA. The BLM has consulted with other Federal, State and local agencies.

The California Governor's Office of Planning and Research did not identify any inconsistencies with the proposed PA and any state plans, policies or programs.

Because this decision is approved by the Secretary of the Department of the Interior, it is not subject to appeal (43 CFR 4.410(a)(3)).

Authority: 40 CFR 1506.6.

Mike Pool,

Deputy Director, Bureau of Land Management.

[FR Doc. 2010–25858 Filed 10–13–10; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–587]

In the Matter of Certain Connecting Devices ("Quick Clamps") for Use With Modular Compressed Air Conditioning Units, Including Filters, Regulators, and Lubricators ("Frl's") That Are Part of Larger Pneumatic Systems and the FRL Units They Connect; Notice of Commission Decision To Review a Final Initial Determination; Schedule for Filing Written Submissions on the Issue Under Review and on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the final initial determination ("ID") on remand issued by the presiding administrative law judge ("ALJ") and denied motions to file reply and sur-reply briefs in connection with the petitions for review.

FOR FURTHER INFORMATION CONTACT: Mark B. Rees, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3116. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by

contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 13, 2006, based on a complaint filed by Norgren, Inc. ("Norgren") of Littleton, Colorado. 71 FR 66193 (Nov. 13, 2006). An amended complaint was filed on October 25, 2006. A supplement to the complaint was filed on November 1, 2006. The amended complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain devices for modular compressed air conditioning units and the FRL units they connect by reason of infringement of claims 1–9 of U.S. Patent No. 5,372,392 ("the '392 patent"). The amended complaint also alleged that a domestic industry exists with regard to the '392 patent under subsection (a)(2) of section 337. The amended complaint named SMC Corp. of Japan; SMC Corporation of America of Indianapolis, Indiana (collectively, "SMC"); AIRTAC of China; and MFD Pneumatics ("MFD") of Chicago, Illinois as the respondents and requested a limited exclusion order and a cease and desist order. On July 13, 2007, the Commission determined not to review an ID terminating the investigation with respect to MFD and AIRTAC on the basis of a consent order stipulation and consent order.

On February 13, 2008, the ALJ issued his final ID finding no violation of section 337. Specifically, the ALJ found that there had been an importation of SMC's accused products and that none of the accused products infringe the asserted claims of the '392 patent. He also found that the asserted claims are not invalid due to obviousness. He further found that Norgren satisfies the domestic industry requirement with respect to the '392 patent. On February 25, 2008, the ALJ issued a recommended determination on remedy and bonding in the event the Commission reversed his finding of no violation of section 337.

On April 18, 2008, the Commission determined not to review the ID and terminated the investigation based on the finding of no violation of section 337. 73 FR 21157 (Apr. 18, 2008). Norgren appealed to the U.S. Court of Appeals for the Federal Circuit ("the Court").

On May 26, 2009, the Court issued its judgment, reversing-in-part the Commission's claim construction, reversing the Commission's determination of noninfringement, and vacating the Commission's determination of nonobviousness. *Norgren Inc.* v. *Int'l Trade Comm'n,* No. 2008–1415 (Fed.Cir. May 26, 2009). The Court remanded the investigation with instructions for the Commission to evaluate obviousness in the first instance based upon the Court's construction of the claim term "generally rectangular ported flange."

Following receipt of the Court's September 9, 2009, mandate, the Commission ordered the investigation remanded to the Chief ALJ for designation of a presiding ALJ to conduct proceedings in accordance with the Court's judgment. The Chief Judge reassigned the investigation to the ALJ who presided over the original investigation. The ALJ held an evidentiary hearing on April 21, 2010, at which all parties were represented. The parties also fully briefed the merits.

On August 5, 2010, the ALJ issued the final ID on remand in which he determined that the asserted claims are not invalid for obviousness. SMC and the Commission investigative attorney ("IA") have petitioned for review of the ID. Norgren has filed a response in opposition to the petitions. The IA and Norgren have also moved to file reply and sur-reply briefs, respectively, in connection with the petitions for review.

Having examined the record of this investigation, including the final ID on remand, the petitions for review, the response in opposition to the petitions, and the motions for leave to file a reply to the response and a sur-reply to the reply to the response, the Commission has determined to review the ID on the issue of obviousness and has determined to deny the motions for additional briefing.

On review, the Commission requests written submissions on the issue under review, particularly the sub-issues of (a) whether the SMC old-style clamp is generally rectangular and (b) whether adding a hinge to one side of a generally rectangular clamp would have been obvious to one skilled in the art in 1993. The Commission also requests that the parties include in their submissions responses to the following queries, with supporting citations to the evidentiary record:

1. Is the ID's finding that the SMC old-style clamp is not "generally rectangular" contrary to the Court's holding in *Norgren Inc.* v. *Int'l Trade Comm'n,* No. 2008–1415 (Fed.Cir. May 26, 2009) (Slip Op. at 6–7) that the SMC and Norgren FRL flanges, which seem to have "intervening sloped sides" and "octagonal" and other appearances, are "generally rectangular"?

2. How, if at all, does the addition of a hinge to swing open and closed one side of a generally rectangular clamp affect the clamp's ability to seal as claimed in the '392 patent?

3. Applying a flexible standard, please identify the teaching(s), motivation(s), or suggestion(s), if any, that existed pre-invention that would have made it obvious to a person of ordinary skill in the art in 1993 to combine a hinge with a generally rectangular clamp used in a pressure air system.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States and/or (2) issue one or more cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (Dec. 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the

amount of the bond that should be imposed.

Written Submissions: The parties to the investigation are requested to file written submissions on the issue under review as set forth above. The submissions should be concise and thoroughly referenced to the record in this investigation. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to provide the expiration date of the '392 patent and state the HTSUS number under which the accused articles are imported. The written submissions and proposed remedial orders must be filed no later than the close of business on October 21, 2010. Reply submissions must be filed no later than the close of business on November 1, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's Rules of Practice and Procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–.46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–.46).

Issued: October 7, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–25801 Filed 10–13–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Third Review)]

Petroleum Wax Candles From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on petroleum wax candles from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* October 4, 2010.

FOR FURTHER INFORMATION CONTACT: Keysha Martinez (202–205–2136), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On October 4, 2010, the Commission determined that the domestic interested party group response to its notice of institution (75 FR 38121, July 1, 2010) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on November 10, 2010, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before November 15, 2010 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by November 15, 2010. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II(C) of the Commission's Handbook on Electronic

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the response submitted by the National Candle Association to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: October 8, 2010.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. 2010–25818 Filed 10–13–10; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–028]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 15, 2010 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436. *Telephone:* (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701–TA–469 and 731–TA–1168 (Final) (Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before October 27, 2010.)
5. Inv. Nos. 701–TA–249 and 731–TA–262, 263, and 265 (Third Review) (Iron Construction Castings from Brazil, Canada, and China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before October 27, 2010.)
6. Outstanding action jackets:

(1) Document No. GC–10–161 concerning Inv. No. 337–TA–413 (Certain Rare-Earth Magnets and Magnetic Materials and Articles Containing Same).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: October 8, 2010.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2010–25936 Filed 10–12–10; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–691]

In the Matter of Certain Inkjet Ink Supplies and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation as to Claims 7 and 10 of U.S. Patent No. 6,089,687 and Claims 2 and 3 of U.S. Patent No. 6,264,301 and Finding a Violation of Section 337; Schedule for Submissions on Remedy, Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 18) issued by the presiding administrative law judge ("ALJ") terminating the investigation as to claims 7 and 10 of U.S. Patent No. 6,089,687 and claims 2 and 3 of U.S. Patent No. 6,264,301 and finding a violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in this investigation.

FOR FURTHER INFORMATION CONTACT: Panyin A. Hughes, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3042. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: This investigation was instituted on October 29, 2009, based upon a complaint filed by Hewlett-Packard Company of Palo Alto, California ("HP") on September 23, 2009, and supplemented on October 7, 2009. 74 FR 55856 (Oct. 29, 2009). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain inkjet ink supplies and components thereof that infringe certain claims of U.S. Patent Nos. 6,959,985 ("the '985 patent"); 7,104,630 ("the '630 patent"); 6,089,687 ("the '687 patent"); and 6,264,301 ("the '301 patent"). The complaint named as respondents Zhuhai Gree Magneto-Electric Co. Ltd. of Guangdong, China ("Zhuhai"); InkPlusToner.com of Canoga Park, California ("InkPlusToner"); Mipo International Ltd. of Kowloon, Hong Kong ("Mipo International"); Mextec Group, Inc.
d/b/a Mipo America Ltd. of Miami, Florida ("Mextec"); Shanghai Angel Printer Supplies Co. Ltd. of Shanghai, China ("Shanghai Angel"); SmartOne Services LLC d/b/a InkForSale.net of Hayward, California ("SmartOne"); Shenzhen Print Media Co., Ltd. of Shenzhen, China ("Shenzhen Print Media"); Comptree Ink d/b/a Meritline, ABCInk, EZ Label, and CDR DVDR Media of City of Industry, California ("Comptree"); Zhuhai National Resources & Jingjie Imaging Products Co., Ltd. of Guangdong, China ("Zhuhai National"); Tatrix International of Guangdong, China ("Tatrix"); and Ourway Image Co., of Guangdong China ("Ourway").

On February 17, 2010, the Commission determined not to review an ID (Order No. 9) finding seven respondents, Mipo International, Mextec, Shanghai Angel, Shenzhen Print Media, Zhuhai National, Tatrix, and Ourway in default pursuant to Commission Rule 210.16. On March 19, 2010, the Commission determined not to review an ID (Order No. 11) terminating the investigation as to respondent Comptree based upon a settlement agreement. Also on March 19, 2010, the Commission determined not to review an ID (Order No. 12) terminating the investigation as to respondent Zhuhai based upon a consent order. On March 31, 2010, the

Commission determined not to review an ID (Order No. 13) terminating the investigation as to respondent InkPlusToner based upon a settlement agreement. On June 7, 2010, the Commission determined not to review an ID (Order No. 14) terminating the investigation as to respondent SmartOne based upon a settlement agreement.

On June 3, 2010, the Commission determined not to review an ID (Order No. 17) terminating the investigation as to the '985 patent and the '630 patent.

On June 17, 2010, HP filed an unopposed motion pursuant to Commission Rule 210.21(a) to withdraw all allegations related to claims 7 and 10 of the '687 patent and claims 2 and 3 of the '301 patent from the complaint, and to terminate the investigation with respect to those claims.

On May 7, 2010, HP moved for summary determination on the issues of domestic industry, importation, and violation of section 337. Pursuant to Commission Rule 210.16(c)(2), 19 CFR 216(c)(2), HP also stated that it was seeking a general exclusion order and a cease and desist order against Mextec. On June 2, 2010, the Commission investigative attorney submitted a response in support of a finding that a domestic industry exists and that the defaulting respondents, Mipo International, Mextec, Shanghai Angel, Shenzhen Print Media, Zhuhai National, Tatrix, and Ourway have violated section 337 by infringing claims 6 and 9 of the '687 patent and claims 1, 5, and 6 of the '301 patent.

On August 30, 2010, the presiding administrative law judge issued the subject ID, Order No. 18, granting: (1) HP's motion to terminate the investigation as to claims 7 and 10 of the '687 patent and claims 2 and 3 of the '301 patent, and (2) HP's motion for summary determination of violation of section 337 with respect to the defaulting respondents. He also recommended a general exclusion order, a cease and desist order directed to domestic respondent Mextec, and a 100 percent bond to permit importation during the period of Presidential review.

No petitions for review were filed. The Commission has determined not to review the subject ID.

In connection with the final disposition of this investigation, the Commission may (1) Issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or are likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) The public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Thursday, October 28, 2010. Reply submissions must be filed no later than the close of business on Thursday, November 4, 2010. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42–46 and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46 and 210.50).

By order of the Commission.

Issued: October 7, 2010.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–25812 Filed 10–13–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree

Notice is hereby given that on September 23, 2010, an electronic version of a proposed Consent Decree was lodged in the United States District Court for District of Arizona in *United States* v. *CalPortland Company,* No. 4:10–CV–00573–DCB. The Consent Decree settles the United States' claims for civil penalties and injunctive relief against CalPortland Company ("CPC") based on violations of the Clean Air Act (the "Act"), 42 U.S.C. 7401 *et seq.,* and the Air Implementation Plan for the State of Arizona approved by EPA pursuant to the Act, in connection with modifications to CPC's cement manufacturing plant in Rillito, Arizona (the "Facility").

Under the terms of the proposed Consent Decree, CPC will pay a civil penalty of $350,000 and will perform injunctive relief. The proposed decree sets forth two compliance options for

CPC and requires CPC to inform EPA of its choice of compliance option within 30 days from the effective date of the decree.

Under Option 1, CPC will construct a new Kiln 6 as authorized by an Arizona Department of Environmental Quality permit within a 42-month time period and permanently shut down kilns 1–4 within six months of commencing operation of Kiln 6.

Under Option 2, CPC will continue to operate Kilns 1 through 4 but will install Particulate Matter controls (enclosures, spraybars and upgrades to existing baghouses) and accept more stringent limits than those already in the permit on equipment previously modified. Option 2 requires stricter opacity standards for some limestone storage piles, mill feed hoppers, and mill rejects bins. Option 2 also imposes lower emission limits on various baghouses and dust collectors and requires the installation of a bag leak detection system.

Option 2 also requires CPC to install software to optimize the operation of the existing kilns, which EPA expects will lead to reduced fuel use and reduced combustion emissions.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *CalPortland Company,* No. 4:10–CV–00573–DCB and DOJ No. 90–5–2–1–08306.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Arizona, 405 W. Congress Street, Suite 4800, Tucson, AZ 85701–5040. 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 in the amount of $11.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–25876 Filed 10–13–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 28, 2010, PCAS–Nanosyn, LLC, 3331–B Industrial Drive, Santa Rosa, California 95403, made application to the Drug Enforcement Administration (DEA) as a bulk manufacturer of the basic classes of controlled substances listed in schedule II:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Phencyclidine (7471)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Methadone (9250)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company is a contract manufacturer. At the request of the company's customers, it manufactures derivatives of controlled substances in bulk form only. The primary service provided by the company to its customers is the development of the process of manufacturing the derivative. As part of its service to its customers, the company distributes the derivatives of the controlled substances it manufactures to those customers. The company's customers use the newly-created processes and the manufactured derivatives in furtherance of formulation processes and dosage form manufacturing; pre-clinical studies, including toxicological studies; clinical studies supporting investigational Drug Applications; and use in stability studies.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR § 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than December 13, 2010.

Dated: October 6, 2010.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2010–25849 Filed 10–13–10; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0044]

Advisory Committee on Construction Safety and Health (ACCSH); Notice of Reestablishment of Charter

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of reestablishment of the ACCSH Charter.

SUMMARY: The Secretary of Labor has reestablished the Charter of the Advisory Committee on Construction Safety and Health (ACCSH) for two years.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Dougherty, Office of Construction Services, Directorate of Construction, Occupational Safety and Health Administration, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020 (TTY (877) 889–5627).

SUPPLEMENTARY INFORMATION: In accordance with the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App. 2), and its implementing regulations (41 CFR 102–3 *et seq.*), the Secretary of Labor (Secretary) is reestablishing the ACCSH Charter for two years. The Charter will be dated, signed, and filed on October 29, 2010 and will expire two years from the date filed.

ACCSH is a continuing advisory committee established under Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act (CSA))(40 U.S.C. 3704(d)(4)), to advise the Secretary and the Assistant Secretary of Labor for Occupational Safety and Health in the formulation of construction safety and health standards as well as on policy matters arising under the CSA and the Occupational

Safety and Health Act of 1970 (OSH Act)(29 U.S.C. 651 *et seq.*).

FACA requires that all advisory committees, including committees established by Congress, file a new charter every two years (5 U.S.C. App. 2 § 14(b)(2)). The ACCSH charter expired on May 6, 2010.

The new Charter includes minor updates to reflect increases in the Committee's annual operating budget ($180,000 to $272,000) and to indicate that ACCSH is generally expected to meet between three and four times per year.

Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701 *et seq.*), the Federal Advisory Committee Act (5 U.S.C. App. 2), 29 CFR part 1912, 41 CFR part 102–3, and Secretary of Labor's Order No. 4–2010 (75 FR 55355 (9/10/2010).

Signed in Washington, DC, this eighth day of October 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2010–25868 Filed 10–13–10; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors and Its Committees; Amended Notice; Changes to Board of Directors Meeting Agenda

Notice

The Legal Services Corporation (LSC) is announcing an amendment to the notice announcing the October 18–19, 2010 meetings of the Board of Directors and its Committees. The meetings will be announced in the **Federal Register** on October 13, 2010. The amendment is being made to reflect changes to the agenda for the Board of Directors' meeting. There are no other changes.

AMENDED BOARD OF DIRECTORS AGENDA: The Board of Directors meeting agenda is amended move from Open Session to Closed Session the following item, originally appearing as item number 17:

"*Consider and act on Management request for authorization to increase the maximum number of hours of accrued vacation leave that may be carried over to the next year.*"

This item has been moved to the Closed Session portion of the Board's meeting agenda and now appears as item number 27. The basis for the closure and the amended agenda for the Board of Directors' meeting follow.

STATUS OF MEETING: Open, except as noted below.

• *Board of Directors*—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to consider and perhaps act on the General Counsel's report on potential and pending litigation involving LSC, to hear a briefing from management on labor relations matters, and to be briefed by LSC's Inspector General.[1]

Amended Agenda

Board of Directors

Agenda

Open Session

1. Pledge of Allegiance.
2. Approval of agenda.
3. Approval of Minutes of the *Board's* Open Session meeting of July 21, 2010.
4. Approval of Minutes of the *Board's* Open Session *Telephonic* meeting of September 21, 2010.
5. *Chairman's* Report.
6. *Members'* Reports.
7. Gulf Coast Update presented by:
   a. James Fry, Executive Director, Legal Services of Alabama
   b. Mark Moreau, Executive Director, Southeast Louisiana Legal Services.
   c. Samuel Buchanan, Executive Director, Mississippi Center for Legal Services.
8. *President's* Report.
9. *Inspector General's* Report.
10. Consider and act on the report of the *Search Committee for LSC President.*
11. Consider and act on the report of the *Promotion & Provision for the Delivery of Legal Services Committee.*
12. Consider and act on the report of the *Finance Committee.*
13. Consider and act on the report of the *Audit Committee.*
14. Consider and act on the report of the *Operations & Regulations Committee*
15. Consider and act on the report of the *Governance & Performance Review Committee.*
16. Consider and act on Resolution 2010–XXX Authorizing the Board Chairman to Appoint Non-Directors to the Board of Directors' Development Committee.
17. Consider and act on Resolutions 2010–008g–j thanking outgoing Board Members for their service and contributions to the Legal Services Corporation.
18. Consider and act on Meeting Schedule for calendar year 2011.
19. Public comment.
20. Consider and act on other business.
21. Consider and act on whether to authorize an executive session of the *Board* to address items listed below under *Closed Session.*

Closed Session

22. Approval of Minutes of the *Board's* Closed Session meeting of July 21, 2010.
23. Approval of Minutes of the *Board's* Closed Session meeting of September 21, 2010.
24. IG briefing of the Board.
25. Consider and act on General Counsel's report on potential and pending litigation involving LSC.
26. *Briefing:* Update on Internal Personnel Matters *(by telephone).*
   a. Presentation by Linda Mullenbach, Senior Assistant. General Counsel, and Alice Dickerson, Director, Office of Human Resources.
27. Consider and act on Management request for authorization to increase the maximum number of hours of accrued vacation leave that may be carried over to the next year.
28. Consider and act on motion to adjourn meeting.

Contact Person for Information: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov.*

Dated: October 12, 2010.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 2010–26078 Filed 10–12–10; 4:15 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 1:30 p.m., November 17, 2010.

PLACE: Mississippi River Commission Headquarters Building, 1400 Walnut Street, Vicksburg, MS.

STATUS: Open to the public for observation, but not for participation.

MATTERS TO BE CONSIDERED: The Commission will consider the Louisiana Coastal Area, Louisiana, Ecosystem Restoration, Six Projects Authorized by Section 7006(e)(3) of Water Resources Development Act of 2007.

CONTACT PERSON FOR MORE INFORMATION: Mr. Stephen Gambrell, telephone 601–634–5766.

George T. Shepard,

Colonel, Corps of Engineers, Secretary, Mississippi River Commission.

[FR Doc. 2010–25982 Filed 10–12–10; 11:15 am]

BILLING CODE 3720–58–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–130)]

Notice of Information Collection.

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is required by NASA FAR Supplement clause 1852.219–85 and supports recertification of eligibility of compliance with SBIR/STTR program requirements.

II. Method of Collection

The SBIR/STTR contractor may submit the required recertification electronically, unless the cognizant NASA Contracting Officer requirements the recertification to be submitted via hard copy. Approximately 50% of the responses are collected electronically.

III. Data

Title: SBIR/STTR Contractor Recertification.

OMB Number: 2700–0124.

Type of Review: Revision of currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 423.

Estimated Time per Response: 0.50 hr.

Estimated Total Annual Burden Hours: 212.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–25806 Filed 10–13–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–126)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Contractors performing research and development are required by statutes, NASA implementing regulations, and OMB policy to submit reports of inventions, patents, data, and copyrights, including the utilization and disposition of same. The NASA New Technology Summary Report reporting form is being used for this purpose.

II. Method of Collection

NASA FAR Supplement clauses for patent rights and new technology encourage the contractor to use an electronic form and provide a hyperlink to the electronic New Technology Reporting Web (eNTRe) site *http://invention.nasa.gov.* This Web site has been set up to help NASA employees and parties under NASA funding agreements (i.e., contracts, grants, cooperative agreements, and subcontracts) to report new technology information directly, via a secure Internet connection, to NASA.

III. Data

Title: NASA FAR Supplement, Part 1827, Patents, Data, and Copyrights.

OMB Number: 2700–0052.

Type of review: Extension of a currently approved collection.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Number of Respondents: 1,016.

Estimated Time per Response: 0.166 hour.

Estimated Total Annual Burden Hours: 3,391.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–25811 Filed 10–13–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–125)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information is used by NASA to effectively maintain an appropriate internal control system for grants and cooperative agreements with institutions of higher education and other non-profit organizations, and to comply with statutory requirements, e.g., Chief Financial Officer's Act, on the accountability of Federal funds.

II. Method of Collection

Electronic funds transfer is used for payment under Treasury guidance. In addition, NASA encourages the use of computer technology and is participating in Federal efforts to extend the use of information technology to more Government processes via the Internet.

III. Data

Title: Financial Monitoring and Control—Grants and Cooperative Agreements.

OMB Number: 2700–0049.

Type of review: Extension of Currently Approved Collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 1,172.

Estimated Number of Responses per Respondent: 41.

Estimated Time per Response: 6 hours.

Estimated Total Annual Burden Hours: 291,326 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–25813 Filed 10–13–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–124)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA PRA Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Grantees and cooperative agreement partners are required to submit new technology reports indicating new inventions and patents.

II. Method of Collection

Grant recipients are encouraged to use information technology to prepare patent reports through a hyperlink to the electronic New Technology Reporting Web (eNTRe) site *http://invention.nasa.gov.* This Web site has been created to help NASA employees and parties under NASA funding agreements (*i.e.,* contracts, grants, cooperative agreements, and subcontracts) to report new technology and patent notification directly, via a secure Internet connection, to NASA.

III. Data

Title: Patents—Grants and Cooperative Agreements.

OMB Number: 2700–0048.

Type of review: Extension of currently approved collection.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Number of Respondents: 5,451.

Estimated Time per Response: 4,361 negative responses/0.166 hour, 1090 responses/8 hours.

Estimated Total Annual Burden Hours: 9,444.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–25814 Filed 10–13–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–123)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The new NASA Explorer Schools (NES) project is a national education project, which works with K–12 teachers to provide content and curricular support selected as the best from among the resources NASA has developed. This data collection will help to assess the NES project implementation and to provide data that can inform decisions made by NASA leadership and project staff about project modifications and implementation.

II. Method of Collection

The current paper-based system is used to collect the information. It is deemed not cost effect to collect the information using a Web site form since the reports submitted vary significantly in format and volume.

III. Data

Title: NASA Explorer Schools Evaluation.

OMB Number: 2700–XXXX.

Type of review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 4,080.

Estimated Number of Responses per Respondent: 7.

Estimated Time per Response: .25 hour.

Estimated Total Annual Burden Hours: 5050 hours.

Estimated Annual Cost for Respondents: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA Clearance Officer.

[FR Doc. 2010–25815 Filed 10–13–10; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–127)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection helps to ensure that engineering changes to contracts are made quickly and in a cost effective manner. Proposals supporting such change orders contain detailed information to obtain best goods and services for the best prices.

II. Method of Collection

NASA does not prescribe a format for submission, though most contractors have cost collection systems which are used for proposal preparation. NASA encourages the use of computer technology for preparing proposals and submission.

III. Data

Title: Modifications Related to Engineering Change Proposals.

OMB Number: 2700–0054.

Type of review: Revision of currently approved collection.

Affected Public: Business or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 150.

Estimated Time per Response: 30 hours.

Estimated Total Annual Burden Hours: 4,500 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–25810 Filed 10–13–10; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (10–128)]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Lori Parker, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Recordkeeping and reporting are required to ensure proper accounting of Federal funds and property provided under grants and cooperative agreements with state and local governments.

II. Method of Collection

Electronic funds transfer is used for payment under Treasury guidance. Submission of almost all information required under grants or cooperative agreements with state and local governments, including property, financial, performance, and financial reports, is submitted electronically.

III. Data

Title: Grants and Cooperative Agreements with State and Local Governments.

OMB Number: 2700–0093.

Type of Review: Revision of currently approved collection.

Affected Public: State, Local or Tribal Governments.

Estimated Number of Respondents: 70.

Estimated Time per Response: 10 hours for recordkeeping and 1 hour for each of different report types.

Estimated Total Annual Burden Hours: 1370 hours.

Estimated Total Annual Cost: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2010–25807 Filed 10–13–10; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Electronic Records Archives (ACERA)

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Electronic Records Archives (ACERA). The committee serves as a deliberative body to advise the Archivist of the United States, on technical, mission, and service issues related to the Electronic Records Archives (ERA). This includes, but is not limited to, advising and making recommendations to the Archivist on issues related to the development, implementation and use of the ERA system. This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Electronic Records Archives Program at *era.program@nara.gov.* This meeting will be recorded for transcription purposes.

DATES: The meeting will be held on November 3, 2010, 8:30 a.m.–4:30 p.m. and November 4, 2010, 9 a.m.–4:30 p.m.

ADDRESSES: 700 Pennsylvania Avenue, NW., Washington, DC 20408–0001.

FOR FURTHER INFORMATION CONTACT: Charles Piercy, Acting Assistant Archivist for the Office of Information Services, National Archives and Records Administration, 8601 Adelphi Road,

College Park, Maryland 20740 (301) 837–3670.

SUPPLEMENTARY INFORMATION:

Agenda

- Opening Remarks
- Approval of Minutes
- Activities Reports
- Adjournment

Dated: October 7, 2010.

Mary Ann Hadyka,

Committee Management Office.

[FR Doc. 2010–25990 Filed 10–13–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Library-Foundation Partnerships

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on Presidential Library-Foundation Partnerships. The meeting will be held to discuss the transformation issues at the National Archives as they relate to Presidential Libraries, the Electionic Record Archives (ERA), the National Declassification Center and priorities for declassification, and recommendations from the Advisory Committee on standing or ad hoc subcommittees, including an update on the development of MOUs.

DATES: The meeting will be held on November 10, 2010 from 9 a.m. to 12 noon.

ADDRESSES: The National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Sharon Fawcett, Assistant Archivist for Presidential Libraries, at the National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland 20740, telephone number (301) 837–3250. Contact the Presidential Libraries staff at *Kathleen.mead@nara.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. No visitor parking is available at the building. Area commercial parking garages are available where hourly rates apply.

Dated: October 7, 2010.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2010–25991 Filed 10–13–10; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119).

Date/Time: November 3, 2010; 8:30 a.m. to 5 p.m. November 4, 2010; 8:30 a.m. to 1 p.m.

Place: National Science Foundation, Room 555, Stafford II Annex, 4201 Wilson Boulevard, Arlington, VA 22203.

Type of Meeting: OPEN*.

*Visitors please report to the Information Center in NSF's North Lobby to receive your Visitor Badge and directions to the Stafford II Annex building next door to NSF's main building.

Contact Person: James Colby, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–5331 *jcolby@nsf.gov*.

Purpose of Meeting: To provide advice with respect to the Foundation's science, technology, engineering, and mathematics (STEM) education and human resources programming.

Agenda

November 3, 2010 (Wednesday)

Report from the NSF Acting Assistant Director for Education and Human Resources
Strategic Vision Break-out Groups:

Working Lunch
Break-out Groups Report to Full Committee
Visit with NSF Director and Deputy Director

November 4, 2010 (Thursday)

Receipt of Committee of Visitor Reports for:

Louis Stokes Alliances for Minority Participation Program
Alliances for Graduate Education and the Professoriate Program
Centers of Research Excellence in Science and Technology Program
Historically Black Colleges and Universities, Undergraduate Program
Tribal Colleges and Universities Program

Joint Meeting with Members of the Mathematical and Physical Sciences Advisory Committee.

Adjournment.

Dated: October 8, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–25823 Filed 10–13–10; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 AND 50–316; NRC–2010–0323]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, respectively, located in Berrien County, Michigan.

The proposed amendment would delete the Technical Specification (TS) requirements for the containment hydrogen recombiners and hydrogen monitors. The proposed TS changes support implementation of the revision to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," that became effective on October 16, 2003. The proposed changes are consistent with Revision 1 of the NRC-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–447, "Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors." In addition to the changes related to requirements for the hydrogen recombiners and monitors, the amendment application includes other administrative changes directly resulting from deletion of the aforementioned TS requirements.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR

50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3 and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the SAMGs [severe accident management guidelines], the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the [Three Mile Island] TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules, Announcements and Directives Branch (RADB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RADB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike

(first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under Consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or

their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment dated September 8, 2010, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

Attorney for licensee: James M. Petro, Jr., Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.

Dated at Rockville, Maryland, this 28th day of September 2010.

For the Nuclear Regulatory Commission.

Terry A. Beltz,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–25879 Filed 10–13–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306; NRC–2010–0325]

Northern States Power Company—Minnesota; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northern States Power Company, a Minnesota corporation (the licensee), doing business as Xcel Energy, to withdraw its January 27, 2010, application for proposed amendment to Facility Operating License Nos. DPR–42 and DPR–60, for the Prairie Island Nuclear Generating Plant, Units 1 and 2, respectively, located in Goodhue County.

The proposed amendment would have revised the facility Technical Specifications (TSs) pertaining to the diesel fuel oil storage volumes in TS 3.8.3.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 4, 2010 (75 FR 23817). However, by letter dated September 16, 2010, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated January 27, 2010 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML100280162), and the licensee's letter dated September 16, 2010 (ADAMS Accession No. ML102590644), which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of October 2010.

For the Nuclear Regulatory Commission.

Thomas J. Wengert,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–25875 Filed 10–13–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7015–ML; ASLBP No. 10–899–02–ML–BD01]

Atomic Safety and Licensing Board; Notice of Opportunity To Participate in Uncontested/Mandatory Hearing (Procedures for Participation by Interested Governmental Entities Regarding Safety Portion of Enrichment Facility Licensing Proceeding)

October 7, 2010.

Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. Kaye D. Lathrop, Dr. Craig M. White.

In the Matter of Areva Enrichment Services, LLC (Eagle Rock Enrichment Facility)

In this 10 CFR part 70 proceeding regarding the request of applicant AREVA Enrichment Services, LLC, (AES) to construct and operate its proposed Eagle Rock Enrichment Facility in Bonneville County, Idaho, on September 30, 2010, the NRC staff issued its final safety evaluation report (SER) analyzing the Atomic Energy Act (AEA)-related safety aspects of the AES application (NUREG–1951, ADAMS Accession No. ML102710296). In accord with AEA section 274*l,* 42 U.S.C. 2021(*l*), on or before *Friday, November 12, 2010,* using the agency's E–Filing system,[1] any interested State, local governmental body, or affected, federally-recognized Indian Tribe may file with the Licensing Board in this proceeding a statement of any issues or questions about which the State, local governmental body, or Indian Tribe wishes the Board to give particular attention as part of the safety/SER-related portion of the uncontested/mandatory hearing process associated with the AES application and the staff's safety review of that application.[2] Such a statement may be accompanied by any supporting documentation that the State, local governmental body, or Indian Tribe sees fit to provide. Any statements and supporting documentation (if any) received by the Board by the deadline indicated above will be made part of the record of this proceeding.

The Board will use such statements and documents as appropriate to inform its prehearing questions to the staff and applicant AES; its inquiries at the oral hearing currently scheduled for the week of January 24, 2011, at the Licensing Board Panel's Rockville, Maryland hearing room; and its decision following the hearing.[3] The Board may also request, no later than *Thursday, January 13, 2011,* that one or more particular States, local governmental bodies, or Indian Tribes send representatives to the hearing to participate as the Board may deem appropriate, including answering Board questions and/or making a statement for the purpose of assisting the Board's exploration of one or more of the issues raised by the State, local governmental body, or Indian Tribe in the prehearing filings described above. The decision on whether to request the presence of representatives of a State, local governmental body, or Indian Tribe at the hearing to participate in the oral hearing is solely at the Board's discretion. The Board's request will specify the issue or issues that the representatives should be prepared to address.

It is so *ordered.*

For the Atomic Safety and Licensing Board.

Dated: October 7, 2010.

G. Paul Bollwerk, III,

Administrative Judge, Rockville, Maryland.

[FR Doc. 2010–25877 Filed 10–13–10; 8:45 am]

BILLING CODE 7590–01–P

[1] The process for accessing and using the agency's E–Filing system is described in the July 23, 2009 notice of hearing that was issued by the Commission for this proceeding. *See* Notice of Receipt of Application for License; Notice of Consideration of Issuance of License; Notice of Hearing and Commission Order and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation; In the Matter of Areva Enrichment Services, LLC (Eagle Rock Enrichment Facility), 74 FR 38,052, 38,055 (Jul. 30, 2009) (CLI–09–15, 70 NRC 1, 10–11 (2009)).

[2] The scope of, and procedural protocols associated with, the uncontested/mandatory hearing in this proceeding are set forth in the Licensing Board's orders of May 19, June 4, and June 30, 2010, as well as its October 7, 2010 scheduling order. *See* Licensing Board Initial Scheduling Order (May 19, 2010) at 3–7 (unpublished); Licensing Board Order (Clarifying Initial Scheduling Order) (June 4, 2010) at 2–5 (unpublished); Licensing Board Order (Setting Aside Hold-Dates for Mandatory Hearings) (June 30, 2010) at 2 (unpublished); Licensing Board Memorandum and Order (Initial General Schedule; Revision to Mandatory Hearing Procedures; Inviting Written Limited Appearance Statements; Participation by Interested Governmental Entities) (Oct. 7, 2010) (unpublished). As the Board's October 7, 2010 memorandum and order also indicates, following the issuance of the staff's final environmental impact statement (EIS), the Board anticipates establishing a schedule to govern IGE participation in the environmental/EIS-related portion of the uncontested/mandatory hearing for this proceeding.

[3] States, local governments, or Indian Tribes should be aware that the uncontested/mandatory hearing is separate and distinct from the NRC's contested hearing process, which has not been invoked in this proceeding. While States, local governments, or Indian Tribes participating as described above may take any position they wish, or no position at all, with respect to the AES application or the staff's associated safety review, they should be cognizant that, due to the inherently adversarial nature of such proceedings, many of the procedures and rights applicable to the NRC's contested hearing process generally are not available with respect to this uncontested hearing. Participation in the NRC's contested hearing process is governed by 10 CFR 2.309 (for persons or entities, including States, local governments, or Indian Tribes, seeking to file contentions of their own) and 10 CFR 2.315(c) (for interested States, local governments, and Indian Tribes seeking to participate with respect to contentions filed by others). Participation in this uncontested hearing does not affect the right of a State, local governmental entity, or Indian Tribe to participate in any separate contested hearing process that might be requested relative to this proceeding.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–282 and 50–306; NRC–2010–0324]

Northern States Power Company—Minnesota; Prairie Island Nuclear Generating Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an exemption from Title 10 of the *Code of Federal Regulations,* (10 CFR), 50.46, "Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors", and 10 CFR 50, Appendix K, "AECCS Evaluation Models," for Facility Operating License Nos. DPR–42 and DPR–60, issued to Northern States Power Company, a Minnesota corporation (NSPM, the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP), located in Goodhue County, Minnesota. In accordance with 10 CFR 51.21, the NRC performed an environmental assessment in support of this requested exemption. Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would consider approval of an exemption for PINGP to the requirements of 10 CFR 50.46 and 10 CFR Appendix K, by allowing NSPM to use Optimized ZIRLO™, an advanced alloy fuel cladding material for pressurized-water reactors. The proposed action is in accordance with the licensee's application dated November 24, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML093280883), as supplemented by letter dated May 26, 2010 (ADAMS Accession No. ML101480083).

The Need for the Proposed Action

The proposed action is needed so that NSPM can use Optimized ZIRLO™, an advanced alloy for fuel rod cladding and other assembly structural components at the PINGP.

Section 50.46 of 10 CFR and 10 CFR part 50, Appendix K, make no provisions for use of fuel rods clad in a material other than zircaloy or ZIRLO™. Since the chemical composition of the Optimized ZIRLO™ alloy differs from the specifications for zircaloy or ZIRLO™, a plant-specific exemption is required to allow the use of the Optimized ZIRLO™ alloy as a cladding material or in other assembly structural components at the PINGP.

Environmental Impacts of the Proposed Action

The NRC has completed its environmental assessment of the proposed exemption. The staff has concluded that the proposed action to approve the use of an additional fuel rod cladding material would not significantly affect plant safety and would not have a significant adverse effect on the probability of an accident occurring.

The NRC staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation, if granted.

The proposed action would not result in an increased radiological hazard beyond those previously analyzed in the Final Environmental Statement for the PINGP dated May 1973 (ADAMS Accession No. ML081840311). There will be no change to radioactive effluents that affect radiation exposures to plant workers and members of the public. Therefore, no changes or different types of radiological impacts are expected as a result of the proposed exemption.

The proposed action does not result in changes to land use or water use, or result in changes to the quality or quantity of non-radiological effluents. No changes to the National Pollution Discharge Elimination System permit are needed. No effects on the aquatic or terrestrial habitat in the vicinity of the plant, or to threatened, endangered, or protected species under the Endangered Species Act, or impacts to essential fish habitat covered by the Magnuson-Stevens Act are expected. There are no impacts to the air or ambient air quality. There are no impacts to historical and cultural resources. There would be no impact to socioeconomic resources. Therefore, no changes to or different types of non-radiological environmental impacts are expected as a result of the proposed exemption.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those considered in the Final Environmental Statement for the PINGP dated May 1973 (ADAMS Accession No. ML081840311).

Agencies and Persons Consulted

In accordance with its stated policy, on September 3, 2010, the staff consulted with the Minnesota State official, Mr. Stephen Rakow of the Minnesota Office of Energy Security, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Further Information

For further details with respect to the proposed action, see the licensee's letter dated November 24, 2009 (ADAMS Accession No. ML093280883), as supplemented by letter dated May 26, 2010 (ADAMS Accession No. ML101480083). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of September 2010.

For the Nuclear Regulatory Commission.

Thomas J. Wengert,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–25878 Filed 10–13–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0267]

Errata Notice; Notice of Public Workshop on a Potential Rulemaking for Spent Nuclear Fuel Reprocessing Facilities

AGENCY: Nuclear Regulatory Commission.

ACTION: Errata Notice; Notice of Public Workshop.

FOR FURTHER INFORMATION CONTACT: Jose Cuadrado, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–492–3287; e-mail *Jose.Cuadrado@nrc.gov*.

SUMMARY: The Notice of Public Workshop on a Potential Rulemaking for Spent Nuclear Fuel Reprocessing Facilities issued on July 23, 2010 (75 FR 45167, August 2, 2010), states that the date and location of the public workshops are as follows:

The public workshops will be held in Rockville, Maryland, on September 7–8, 2010, from 9 a.m. to 5 p.m. and in Albuquerque, New Mexico, on the week of October 4, 2010, from 9 a.m. to 5 p.m. The September 7–8, 2010, workshop will be held at the Hilton Washington, DC/Rockville Hotel & Executive Meeting Center, located at 1750 Rockville Pike, Rockville, Maryland. The exact dates and location for the October 2010 workshop in Albuquerque, New Mexico, will be noticed no fewer than ten (10) days prior to the workshop [* * *]

The dates and location for the October 2010 workshop have been finalized. The workshop will be held on October 19–20, 2010, at the Sheraton Albuquerque Uptown Hotel, located at 2600 Louisiana Boulevard NE, Albuquerque, New Mexico.

Dated at Rockville, Maryland this *5th* day of October, 2010.

For the Nuclear Regulatory Commission.

Thomas G. Hiltz,

Acting Deputy Director, Special Projects and Technical Support Directorate, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2010–25874 Filed 10–13–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Salary Council Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of Meeting.

SUMMARY: The Federal Salary Council will meet on October 29, 2010, at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations and experts in the fields of labor relations and pay policy. The Council makes recommendations to the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) about the locality pay program for General Schedule employees under section 5304 of title 5, United States Code. The Council's recommendations cover the establishment or modification of locality pay areas, the coverage of salary surveys, the process of comparing Federal and non-Federal rates of pay, and the level of comparability payments that should be paid.

The October meeting will be devoted to reviewing the results of pay comparisons and formulating its recommendations to the President's Pay Agent on pay comparison methods, locality pay rates, and locality pay areas and boundaries for 2012. The meeting is open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to submit testimony or present material to the Council at the meeting.

DATES: October 29, 2010, at 10 a.m.

Location: Office of Personnel Management, 1900 E Street, NW., Room 5H17, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles D. Grimes, III, Deputy Associate Director, Employee Services, Office of Personnel Management, 1900 E Street, NW., Room 7H31, Washington, DC 20415–8200. Phone (202) 606–2838; FAX (202) 606–4264; or e-mail at *pay-performance-policy@opm.gov.*

For the President's Pay Agent.

John Berry,

Director.

[FR Doc. 2010–25829 Filed 10–13–10; 8:45 am]

BILLING CODE 6325–39–P

POSTAL SERVICE

International Product Change—Inbound Expedited Services 4

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of its filing a request with the Postal Regulatory Commission to add Inbound Expedited Services 4 to the Competitive Product List pursuant to 39 U.S.C. 3642.

DATES: October 14, 2010.

FOR FURTHER INFORMATION CONTACT: Margaret M. Falwell, 703–292–3576.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that it filed with the Postal Regulatory Commission, on September 30, 2010, a request to add Inbound Expedited Services 4 to the Competitive Product List. The bases for determining that this is a competitive product and that it satisfies the requirements of 39 U.S.C. 3633 are included in the documents available in Docket Nos. MC2010–37 and CP2010–126 on the Postal Regulatory Commission's Web site, *http://www.prc.gov.*

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 2010–25911 Filed 10–13–10; 8:45 am]

BILLING CODE 7710–12–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before November 15, 2010. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: SBA Direct and SBA Online Community.

Frequency: On Occasion.

SBA Form Number: N/A.

Description of Respondents: SBA Web-site users.

Responses: 710,000.

Annual Burden: 4,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 2010–25828 Filed 10–13–10; 8:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 6–K; OMB Control No. 3235–0116; SEC File No. 270–107.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form 6–K (17 CFR 249.306) is a disclosure document under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) that must be filed by a foreign private issuer to report material information promptly after the occurrence of specified or other

important corporate events that are disclosed in the foreign private issuer's home country. The purpose of Form 6–K is to ensure that U.S. investors have access to the same information that foreign investors do when making investment decisions. Form 6–K takes approximately 8.7 hours per response and is filed by approximately 12,022 issuers annually. We estimate that 75% of the 8.7 hours per response (6.525 hours) is prepared by the issuer for a total annual reporting burden of 78,444 hours (6.525 hours per response × 12,022 responses).

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Jeffrey Heslop, Acting Director/CIO, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: October 6, 2010.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25865 Filed 10–13–10; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29459; 812–13605]

Van Eck Associates Corporation, et al.; Notice of Application

October 7, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

Applicants: Van Eck Associates Corporation ("Adviser"), Market Vectors ETF Trust ("Trust") and Van Eck Securities Corporation ("Distributor").

Summary of Application: Applicants request an order that permits: (a) Series of certain actively managed open-end management investment companies to issue shares ("Shares") redeemable in large aggregations only ("Creation Units"); (b) secondary market transactions in Shares to occur at negotiated market prices; (c) certain series to pay redemption proceeds, under certain circumstances, more than seven days from the tender of Shares for redemption; (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Units; and (e) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Shares.

Filing Dates: The application was filed on November 14, 2008, and amended on May 15, 2009, January 29, 2010, August 27, 2010, and October 7, 2010.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. November 2, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 335 Madison Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Emerson S. Davis, Senior Counsel, at (202) 551–6868 or Julia K. Gilmer, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is registered as an open-end management investment company under the Act and organized as a Delaware business trust. The Trust will initially offer two series, Market Vectors—Active Africa ETF ("Active Africa ETF") and Market Vectors—Active Short Municipal ETF ("Active Short Municipal ETF") (together, the "Initial Funds"). The investment objective of the Active Africa ETF will be to provide long-term capital growth by investing primarily in equity securities in Africa. The investment objective of the Active Short Municipal ETF will be to seek as high a level of tax-exempt income as is consistent with preservation of capital.

2. Applicants request that the order apply to any future series of the Trust or of other open-end management companies that may utilize active management investment strategies ("Future Funds").[1] Any Future Fund will be (a) advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser, and (b) comply with the terms and conditions of the application. Future Funds may invest in equity securities or fixed income securities ("Fixed Income Funds") traded in U.S. markets or securities traded on global markets (together with the Active Africa ETF, the "Foreign Funds").[2] The Initial Funds and Future Funds, including the Foreign Funds, together are the "Funds."

3. The Adviser, a Delaware corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will serve as investment adviser to the Funds. The Adviser may retain investment advisers as sub-advisers in connection with the Funds (each, a "Fund Sub-Adviser"). Any Fund Sub-Adviser will be registered under the Advisers Act. The Distributor, a Delaware corporation, is registered as a broker-dealer under the Securities Exchange Act of 1934

[1] All entities that currently intend to rely on the order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. An Investing Fund (as defined below) may rely on the order only to invest in the Funds and not in any other registered investment company.

[2] Neither the Initial Funds nor any Future Fund will invest in option contracts, futures contracts, or swap agreements.

("Exchange Act") and will serve as the principal underwriter and distributor for each of the Funds. The Distributor is an affiliated person of the Adviser within the meaning of section 2(a)(3)(C) of the Act.

4. Applicants anticipate that a Creation Unit will consist of at least 50,000 Shares and that the price of a Share will range from $15 to $100. All orders to purchase Creation Units must be placed with the Distributor by or through a party that has entered into an agreement with the Trust, the Distributor and transfer agent of the Trust ("Authorized Participant"). An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation, a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company ("DTC," and such participant, "DTC Participant"). Shares of each Fund generally will be purchased in Creation Units in exchange for an in-kind deposit by the purchaser of a portfolio of securities (the "Deposit Securities"), designated by the Adviser, together with the deposit of a specified cash payment ("Cash Component" together with the Deposit Securities, the "Fund Deposit"). The Cash Component will be an amount equal to the difference between: (a) The net asset value ("NAV") per Creation Unit of the Fund; and (b) the total aggregate market value per Creation Unit of the Deposit Securities.[3] Applicants state that operating on an exclusively "in-kind" basis for one or more Funds may present operational problems for such Funds. Each Fund may permit, under certain circumstances, an in-kind purchaser to substitute cash-in-lieu of depositing some or all of the Deposit Securities.

5. An investor purchasing or redeeming a Creation Unit from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase or sale of Creation Units.[4] The Transaction Fees relevant to each Fund will be fully disclosed in the Fund's prospectus ("Prospectus") and the method of calculating these Transaction Fees will be fully disclosed in the statement of additional information ("SAI") of such Fund.[5] All orders to purchase Creation Units will be placed with the Distributor by or through an Authorized Participant, and it will be the Distributor's responsibility to transmit such orders to the Funds. The Distributor also will be responsible for delivering a Prospectus to those persons purchasing Creation Units and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it.

6. Purchasers of Shares in Creation Units may hold such Shares or may sell such Shares into the secondary market. Shares will be listed and traded at negotiated prices on a national securities exchange as defined in section 2(a)(26) of the Act (the "Stock Exchange"). It is expected that one or more Stock Exchange specialists ("Specialists") or market makers ("Market Makers") will be assigned to Shares and maintain a market for Shares.[6] The price of Shares trading on the Stock Exchange will be based on a current bid-offer market. Transactions involving the sale of Shares on the Stock Exchange will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include arbitrageurs. The Specialists or Market Makers, in providing a fair and orderly secondary market for Shares, also may purchase Creation Units for use in their own market making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[7] Applicants expect that the price at which the Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at their NAV, which should ensure that the Shares will not trade at a material discount or premium in relation to their NAV.

8. The Shares themselves will not be individually redeemable and owners of Shares may acquire those Shares from a Fund or tender such shares for redemption to the Fund, in Creation Units only. To redeem, an investor must accumulate enough Shares to constitute a Creation Unit. Redemption requests must be placed by or through an Authorized Participant.[8] Shares generally will be redeemed in Creation Units in exchange for a particular portfolio of securities ("Fund Securities") plus or minus a "Cash Redemption Amount" as the case may be (collectively a "Fund Redemption"). The Cash Redemption Amount is cash in an amount equal to the difference between the NAV of the Shares being redeemed and the market value of the Fund Securities. At the discretion of the Fund, a beneficial owner might also receive the cash equivalent of a Fund Security upon request because, for instance, it was restrained by regulation or policy from transacting in the securities. The redeeming investor also must pay to the Fund a Transaction Fee.

9. Applicants state that in accepting Deposit Securities and satisfying redemptions with Fund Securities, a Fund will comply with the federal securities laws, including that the Deposit Securities and Fund Securities are sold in transactions that would be exempt from registration under the Securities Act of 1933 ("Securities Act").[9] The Deposit Securities (and Fund Securities) will consist of a pro rata basket of a Fund's portfolio.[10]

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[3] In addition to the list of the names and the required number of shares of each Deposit Security, it is intended that, on each day that a Fund is open, including as required by section 22(e) of the Act ("Business Day"), the Cash Component effective as of the previous Business Day, as well as the estimated Cash Component for the current day, will be made available. The applicable Stock Exchange (defined below) will disseminate, every 15 seconds throughout the trading day through the facilities of the Consolidated Tape Association, an amount representing on a per Share basis, the sum of the current value of the Deposit Securities and the estimated Cash Component.

[4] Where a Fund permits an in-kind purchaser to substitute cash-in-lieu of depositing a portion of the Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing those securities.

[5] All representations and conditions contained in the application that require a Fund to disclose particular information in the Fund's Prospectus and/or annual report shall be effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in Investment Company Act Release No. 28584 (Jan. 13, 2009).

[6] If Shares are listed on Nasdaq, no Specialist will be contractually obligated to make a market in Shares. Rather, under Nasdaq's listing requirements, two or more Market Makers will be registered in Shares and required to make a continuous, two-sided market or face regulatory sanctions.

[7] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. Beneficial ownership of Shares will be shown on the records of DTC or DTC Participants.

[8] The Fixed Income Funds also intend to substitute a cash-in-lieu amount to replace any Deposit Security or Fund Security of a Fund that is a "to-be-announced transaction" or "TBA Transaction." A TBA Transaction is a method of trading mortgage-backed securities. In a TBA Transaction, the buyer and seller agree upon general trade parameters such as agency, settlement date, par amount and price. The actual pools delivered generally are determined two days prior to the settlement date. The amount of substituted cash in the case of TBA Transactions will be equivalent to the value of the TBA Transaction listed as a Deposit Security or Fund Security.

[9] In accepting Deposit Securities and satisfying redemptions with Fund Securities that are restricted securities eligible for resale pursuant to rule 144A under the Securities Act, the relevant Funds will comply with the conditions of rule 144A. The Prospectus for a Fund will also state that an Authorized Participant that is not a "Qualified Institutional Buyer" as defined in rule 144A under the Securities Act will not be able to receive, as part of a redemption, restricted securities eligible for resale under rule 144A.

[10] In the case of Fixed Income Funds, because it is often impossible to break up bonds beyond

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10. Neither the Trust nor any Fund will be advertised or marketed or otherwise held out as a "mutual fund." Instead, each Fund will be marketed as an "actively managed exchange-traded fund." Any advertising material where features of obtaining, buying or selling Creation Units are described or where there is reference to redeemability will prominently disclose that Shares are not individually redeemable and that owners of Shares may acquire Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. The same approach will be followed in the SAI, shareholder reports and any marketing or advertising materials issued or circulated in connection with the Shares.

11. The Funds' website, which will be publicly available prior to the public offering of Shares, will include the Prospectus and other information about the Funds that is updated on a daily basis, including for each Fund, (a) the prior Business Day's NAV and the reported closing price, and a calculation of the premium and discount of such price against such NAV, and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its website the identities and quantities of the securities held by the Fund ("Portfolio Securities") and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.[11]

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 22(e) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (2) of the Act, and under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust and each Fund to redeem Shares in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units from each Fund. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, investors should be able to sell Shares in the secondary market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c–1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security that is currently being offered to the public by or through an underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Shares will take place at negotiated prices, not at a current offering price described in the Prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that, while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers resulting from sales at different prices, and (c) assure an orderly distribution of investment company shares by eliminating price competition from brokers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Shares does not involve the Funds as parties and cannot result in dilution of an investment in Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage activity will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 22(e) of the Act

7. Section 22(e) of the Act generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. Applicants state that settlement of redemptions for Foreign Funds will be contingent not

certain minimum sizes needed for transfer and settlement, there may be minor differences between a basket of Deposit Securities or Fund Securities and a true pro rata slice of a Fund's portfolio.

[11] Applicants note that under accounting procedures followed by the Funds, trades made on the prior Business Day ("T") will be booked and reflected in NAV on the current Business Day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the Business Day the portfolio that will form the basis for the NAV calculation at the end of the Business Day.

only on the settlement cycle of the U.S. securities markets but also on the delivery cycles in local markets for underlying foreign Portfolio Securities held by the Foreign Funds. Applicants state that current delivery cycles for transferring Portfolio Securities to redeeming investors, coupled with local market holiday schedules, in certain circumstances will cause the delivery process for the Foreign Funds to be longer than seven calendar days. Applicants request relief under section 6(c) of the Act from section 22(e) to allow Foreign Funds to pay redemption proceeds up to 15 calendar days after the tender of the Creation Units for redemption. Except as disclosed in the relevant Foreign Fund's Prospectus and/or SAI, applicants expect that each Foreign Fund will be able to deliver redemption proceeds within seven days.[12]

8. Applicants state that Congress adopted section 22(e) to prevent unreasonable, undisclosed and unforeseen delays in the actual payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the Prospectus and/or SAI with respect to each Foreign Fund, will identify (a) those instances in a given year where, due to local holidays, more than seven days will be needed to deliver redemption proceeds and will list such holidays, and (b) the maximum number of days needed to deliver the proceeds, up to 15 calendar days.

9. Applicants are not seeking relief from section 22(e) with respect to Foreign Funds that do not effect creations and redemptions of Creation Units in-kind.

Section 12(d)(1) of the Act

10. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter, or any other broker or dealer from selling its shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

11. Applicants request relief to permit Investing Funds (as defined below) to acquire Shares in excess of the limits in section 12(d)(1)(A) of the Act and to permit the Funds, their principal underwriters and any broker or dealer registered under the Exchange Act ("Brokers") to sell Shares to Investing Funds in excess of the limits in section 12(d)(l)(B) of the Act. Applicants request that these exemptions apply to: (a) Any Fund that is currently or subsequently part of the same "group of investment companies" as the Initial Funds within the meaning of section 12(d)(1)(G)(ii) of the Act as well as any principal underwriter for the Funds and any Brokers selling Shares of a Fund to an Investing Fund (as defined below); and (b) each management investment company or unit investment trust registered under the Act that is not part of the same "group of investment companies" as the Funds within the meaning of section 12(d)(1)(G)(ii) of the Act and that enters into a FOF Participation Agreement (as defined below) with a Fund (such management investment companies are referred to herein as "Investing Management Companies," such unit investment trusts are referred to herein as "Investing Trusts," and Investing Management Companies and Investing Trusts together are referred to herein as "Investing Funds").[13] Investing Funds do not include the Funds. Each Investing Trust will have a sponsor ("Sponsor") and each Investing Management Company will have an investment adviser within the meaning of section 2(a)(20)(A) of the Act ("Investing Fund Adviser") that does not control, is not controlled by or under common control with the Adviser. Each Investing Management Company may also have one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each, a "Sub-Adviser"). Each Investing Fund Adviser and any Sub-Adviser will be registered as an investment adviser under the Advisers Act.

12. Applicants assert that the proposed transactions will not lead to any of the abuses that section 12(d)(1) was designed to prevent. Applicants submit that the proposed conditions to the requested relief address the concerns underlying the limits in section 12(d)(1), which include concerns about undue influence, excessive layering of fees and overly complex structures.

13. Applicants believe that neither an Investing Fund nor an Investing Fund Affiliate would be able to exert undue influence over a Fund.[14] To limit the control that an Investing Fund may have over a Fund, applicants propose a condition prohibiting the Investing Fund Adviser, Sponsor, any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by the Investing Fund Adviser, the Sponsor, or any person controlling, controlled by, or under common control with the Investing Fund Adviser or Sponsor ("Investing Fund's Advisory Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Sub-Adviser, any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser ("Investing Fund's Sub-Advisory Group").

14. Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in an offering of securities during the existence of an underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer,

[12] Rule 15c6–1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade date. Applicants acknowledge that relief obtained from the requirements of section 22(e) will not affect any obligations that they have under rule 15c6–1.

[13] Applicants state that certain Investing Funds may not be part of the same group of investment companies as the Funds but may be subadvised by an Adviser or an entity controlling, controlled by or under common control with the Adviser.

[14] An "Investing Fund Affiliate" is any Investing Fund Adviser, Sub-Adviser, Sponsor, promoter and principal underwriter of an Investing Fund, and any person controlling, controlled by or under common control with any of these entities. "Fund Affiliate" is an investment adviser, promoter, or principal underwriter of a Fund or any person controlling, controlled by or under common control with any of these entities.

director, member of an advisory board, Investing Fund Adviser, Sub-Adviser, employee or Sponsor of the Investing Fund, or a person of which any such officer, director, member of an advisory board, Investing Fund Adviser, Sub-Adviser, employee or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

15. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Investing Management Company, including a majority of the directors or trustees who are not "interested persons" within the meaning of section 2(a)(19) of the Act ("disinterested directors or trustees"), will be required to find that the advisory fees charged under the contract are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract of any Fund in which the Investing Management Company may invest. In addition, an Investing Fund Adviser, or Investing Trust's trustee ("Trustee") or Sponsor, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–1 under the Act) received from a Fund by the Investing Fund Adviser, Trustee or Sponsor or an affiliated person of the Investing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, Trustee or Sponsor or its affiliated person by a Fund, in connection with the investment by the Investing Fund in the Fund. Applicants also state that any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.[15]

16. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that a Fund will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting the Fund to purchase shares of a money market fund for short-term cash management purposes.

17. To ensure that an Investing Fund is aware of the terms and conditions of the requested order, the Investing Funds must enter into an agreement with the respective Funds ("FOF Participation Agreement"). The FOF Participation Agreement will include an acknowledgement from the Investing Fund that it may rely on the order only to invest in the Funds and not in any other investment company.

Section 17(a) of the Act

18. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person ("second tier affiliates"), from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. The Funds may be deemed to be controlled by the Adviser or an entity controlling, controlled by or under common control with the Adviser and hence affiliated persons of each other. In addition, the Funds may be deemed to be under common control with any other registered investment company (or series thereof) advised by the Adviser or an entity controlling, controlled by or under common control with the Adviser (an "Affiliated Fund").

19. Applicants request an exemption under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act in order to permit in-kind purchases and redemptions of Creation Units from the Funds by persons that are affiliated persons or second tier affiliates of the Funds solely by virtue of one or more of the following: (a) Holding 5% or more, or more than 25%, of the Shares of the Trust or one or more Funds; (b) having an affiliation with a person with an ownership interest described in (a); or (c) holding 5% or more, or more than 25%, of the shares of one or more Affiliated Funds.[16] Applicants also request an exemption in order to permit each Fund to sell Shares to and redeem Shares from, and engage in the in-kind transactions that would accompany such sales and redemptions with, any Investing Fund of which the Fund is an affiliated person or second-tier affiliate.[17]

20. Applicants contend that no useful purpose would be served by prohibiting such affiliated persons from making in-kind purchases or in-kind redemptions of Shares of a Fund in Creation Units. All shareholders, regardless of affiliation will be given the same opportunities with respect to creations and redemptions in-kind. The method of valuing Portfolio Securities held by a Fund is the same as that used for calculating in-kind purchase or redemption values and neither it nor the composition of a Fund Deposit or Fund Redemption will vary with the identity of the purchaser or redeemer. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the specified affiliated persons of a Fund to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching of the Fund.

21. Applicants also submit that the sale of Shares to and redemption of Shares from an Investing Fund satisfies the standards for relief under sections 17(b) and 6(c) of the Act. Applicants note that any consideration paid for the purchase or redemption of Shares directly from a Fund will be based on the NAV of the Fund in accordance with policies and procedures set forth in the Fund's registration statement.[18] Applicants also state that the proposed transactions are consistent with the general purposes of the Act and appropriate in the public interest.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:[19]

[15] Any reference to NASD Conduct Rule 2830 includes any successor or replacement rule that may be adopted by the Financial Industry Regulatory Authority.

[16] Applicants are not seeking relief from section 17(a) for, and the requested relief will not apply to, transactions where a Fund could be deemed an affiliated person, or an affiliated person of an affiliated person of an Investing Fund because the Adviser, or an entity controlling, controlled by or under common control with the Adviser provides investment advisory services to that Investing Fund.

[17] Applicants state that although they believe that an Investing Fund generally will purchase Shares in the secondary market, an Investing Fund could seek to transact in Creation Units directly with a Fund.

[18] Applicants acknowledge that the receipt of compensation by (a) an affiliated person of an Investing Fund, or an affiliated person of such person, for the purchase by the Investing Fund of Shares of a Fund or (b) an affiliated person of a Fund, or an affiliated person of such person, for the sale by the Fund of Shares to an Investing Fund, may be prohibited by section 17(e)(1) of the Act. The FOF Participation Agreement also will include this acknowledgment.

[19] *See* note 5, *supra.*

A. Actively-Managed Exchange-Traded Fund Relief

1. Each Prospectus will clearly disclose that, for purposes of the Act, Shares are issued by a Fund and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a FOF Participation Agreement with the Fund regarding the terms of the investment.

2. As long as each Fund operates in reliance on the requested order, the Shares of the Funds will be listed on a Stock Exchange.

3. Neither the Trust nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that the Fund is an actively managed exchange-traded fund. Each Prospectus will prominently disclose that the Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may purchase those Shares from the Fund and tender those Shares for redemption to the Fund in Creation Units only.

4. The Web site for each Fund, which is and will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) The prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.

5. The Prospectus and annual report for each Fund will also include: (a) The information listed in condition A.4(b), (i) in the case of the Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable, and (b) calculated on a per Share basis for one, five and ten year periods (or for the life of the Fund), the cumulative total return and the average annual total return based on NAV and closing price.

6. On each Business Day, before commencement of trading in Shares on the Stock Exchange, the Fund will disclose on its Web site the identities and quantities of the Portfolio Securities and other assets held by the Fund that will form the basis for the Fund's calculation of NAV at the end of the Business Day.

7. The Adviser or Fund Sub-Adviser, directly or indirectly, will not cause any Authorized Participant (or any investor on whose behalf an Authorized Participant may transact with the Fund) to acquire any Deposit Security for the Fund through a transaction in which the Fund could not engage directly.

8. The requested relief to permit ETF operations will expire on the effective date of any Commission rule under the Act that provides relief permitting the operation of actively managed exchange-traded funds.

B. Section 12(d)(1) Relief

1. The members of the Investing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of the Investing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding voting securities of a Fund, the Investing Fund's Advisory Group or the Investing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding voting securities of a Fund, it will vote its Shares of the Fund in the same proportion as the vote of all other holders of the Fund's Shares. This condition does not apply to the Investing Fund's Sub-Advisory Group with respect to a Fund for which the Sub-Adviser or a person controlling, controlled by or under common control with the Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act.

2. No Investing Fund or Investing Fund Affiliate will cause any existing or potential investment by the Investing Fund in a Fund to influence the terms of any services or transactions between the Investing Fund or an Investing Fund Affiliate and the Fund or a Fund Affiliate.

3. The board of directors or trustees of an Investing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to assure that the Investing Fund Adviser and any Sub-Adviser are conducting the investment program of the Investing Management Company without taking into account any consideration received by the Investing Management Company or an Investing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

4. Once an investment by an Investing Fund in the Shares exceeds the limit in section 12(d)(1)(A)(i) of the Act, the Board of a Fund, including a majority of the disinterested Board members, will determine that any consideration paid by the Fund to the Investing Fund or an Investing Fund Affiliate in connection with any services or transactions: (i) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (ii) is within the range of consideration that the Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (iii) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between a Fund and its investment adviser(s), or any person controlling, controlled by or under common control with such investment adviser(s).

5. The Investing Fund Adviser, or Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Investing Fund in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b–l under the Act) received from a Fund by the Investing Fund Adviser, or Trustee or Sponsor, or an affiliated person of the Investing Fund Adviser, or Trustee or Sponsor, other than any advisory fees paid to the Investing Fund Adviser, or Trustee or Sponsor, or its affiliated person by the Fund, in connection with the investment by the Investing Fund in the Fund. Any Sub-Adviser will waive fees otherwise payable to the Sub-Adviser, directly or indirectly, by the Investing Management Company in an amount at least equal to any compensation received from a Fund by the Sub-Adviser, or an affiliated person of the Sub-Adviser, other than any advisory fees paid to the Sub-Adviser or its affiliated person by the Fund, in connection with the investment by the Investing Management Company in the Fund made at the direction of the Sub-Adviser. In the event that the Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Investing Management Company.

6. No Investing Fund or Investing Fund Affiliate (except to the extent it is acting in its capacity as an investment

adviser to a Fund) will cause a Fund to purchase a security in an Affiliated Underwriting.

7. The Board of the Fund, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by the Fund in an Affiliated Underwriting, once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Investing Fund in the Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performance of comparable securities purchased during a comparable period of time in underwritings other than Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interest of shareholders.

8. Each Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings once an investment by an Investing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

9. Before investing in a Fund in excess of the limit in section 12(d)(1)(A), an Investing Fund will execute a FOF Participation Agreement with the Fund stating that their respective boards of directors or trustees and their investment advisers, or Trustee and Sponsor, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of a Fund in excess of the limit in section 12(d)(1)(A)(i), an Investing Fund will notify the Fund of the investment. At such time, the Investing Fund will also transmit to the Fund a list of the names of each Investing Fund Affiliate and Underwriting Affiliate. The Investing Fund will notify the Fund of any changes to the list as soon as reasonably practicable after a change occurs. The Fund and the Investing Fund will maintain and preserve a copy of the order, the FOF Participation Agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

10. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Investing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Fund in which the Investing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Investing Management Company.

11. Any sales charges and/or service fees charged with respect to shares of an Investing Fund will not exceed the limits applicable to a fund of funds as set forth in NASD Conduct Rule 2830.

12. No Fund will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent permitted by exemptive relief from the Commission permitting a Fund to purchase shares of a money market fund for short-term cash management purposes.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25866 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29458; 812–13657]

Claymore Exchange-Traded Fund Trust, *et al.;* Notice of Application

October 7, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application to amend a prior order under section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e) and 24(d) of the Act and rule 22c–1 under the Act, under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act, and under section 12(d)(1)(J) granting an exemption from sections 12(d)(1)(A) and (B) of the Act ("Prior Order").[1]

SUMMARY OF APPLICATION: The Prior Order permits: (a) Open-end management investment companies, whose series are based on certain equity or fixed-income securities indexes (each, an "Underlying Index"), to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices; (c) dealers to sell shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); (d) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares; (e) under certain circumstances, certain series to pay redemption proceeds more than seven days after the tender of shares; and (f) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire shares of the series. Applicants seek to amend the Prior Order to: (a) Permit certain Funds (as defined below) to track an Underlying Index that is created, compiled, sponsored, or maintained by an index provider ("Index Provider") that is an affiliated person, or an affiliated person of an affiliated person, of the Fund, its investment adviser, distributor, promoter, or any sub-adviser to the

[1] Claymore Exchange-Traded Fund Trust, et al., Investment Company Act Release Nos. 27469 (Aug. 28, 2006) (notice) and 27483 (Sept. 18, 2006) (order), *as amended by* Investment Company Act Release Nos. 27982 (Sept. 26, 2007) (notice) and 28019 (Oct. 23, 2007) (order).

Fund; (b) delete the relief granted from the requirements of section 24(d) of the Act in the Prior Order and revise the applications on which the Prior Order was issued ("Prior Applications") to reflect such deletion; (c) modify the 80%/90% investment requirement in the Prior Applications; (d) revise the discussion of depositary receipts ("Depositary Receipts") in the Prior Applications; and (e) permit the personnel of the Adviser (as defined below) or any sub-adviser who are responsible for the designation and dissemination of the securities to be used for creations ("Deposit Securities") or redemptions ("Fund Securities") to also select securities for purchase or sale by actively-managed accounts of the Adviser or any sub-adviser.

APPLICANTS: Claymore Exchange-Traded Fund Trust, Claymore Exchange-Traded Fund Trust 2, Claymore Exchange-Traded Fund Trust 3 (each, a "Trust" and together, the "Trusts"), Guggenheim Funds Investment Advisors, LLC ("Adviser"), and Guggenheim Funds Distributors, Inc. ("Distributor").

FILING DATES: The application was filed on May 5, 2009, and amended on November 23, 2009, September 3, 2010, and October 1, 2010. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 1, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, 2455 Corporate West Drive, Lisle, IL 60532.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

Applicants' Representations

1. Each Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. Each Trust offers one or more series (each a "Fund"), each of which operates as an exchange-traded fund ("ETF"). The Adviser, a Delaware limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). The Adviser serves as investment adviser to each of the Funds and may retain sub-advisers ("Sub-Advisers") to manage the assets of one or more of the Funds. Any Sub-Adviser will be registered under the Advisers Act. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934 ("Exchange Act"), serves as principal underwriter and distributor for each of the Funds.

2. Applicants currently are permitted to offer Funds that operate in reliance on the Prior Order and seek to track the performance of Underlying Indexes from Index Providers that are not "affiliated persons" (as such term is defined in section 2(a)(3) of the Act), or affiliated persons of affiliated persons, of a Trust, the Adviser, any Sub-Adviser to a Fund, the Distributor or a promoter of a Fund. Certain Funds rely on the Prior Order and track an Underlying Index provided by either AlphaShares, LLC ("AlphaShares") or Delta Global Indices, LLC ("Delta Global") (collectively, the "Affected Funds").[2] Currently, neither AlphaShares nor Delta Global is an affiliated person, nor an affiliated person of an affiliated person, of a Trust, the Adviser, or any Sub-Adviser to a Fund, the Distributor or promoter of a Fund.

3. Applicants seek to amend the Prior Order to permit an Affected Fund to track an Underlying Index that is created, compiled, sponsored, or maintained by an Index Provider that is an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of a Trust, the Adviser, the Distributor, promoter, or any Sub-Adviser to the Affected Fund solely because the Index Provider serves as a Sub-Adviser to a Subadvised Fund (as defined below).[3] The Adviser proposes to offer a closed-end fund ("Closed-End Fund") for which AlphaShares would serve as Sub-Adviser. In reliance on an order granting relief with respect to the offering of actively managed Future Funds,[4] the Adviser and Claymore Exchange-Traded Fund Trust 3 propose to offer three actively managed ETFs for which Delta Global would serve as Sub-Adviser. Because the Adviser serves or will serve as investment adviser to each, the Affected Funds and each Subadvised Fund could be deemed to be under common control for purposes of section 2(a)(3). In addition, section 2(a)(3)(E) provides that any investment adviser to an investment company is deemed to be an affiliated person of such company. Accordingly, by serving as Sub-Adviser to a Subadvised Fund, each of AlphaShares and Delta Global could be deemed to be an affiliated person of an affiliated person of the Adviser and/or the Fund(s) for which it serves as Index Provider. As a result, applicants would not be permitted to retain either AlphaShares or Delta Global as Sub-Adviser to a Subadvised Fund, absent further exemptive relief.

4. Applicants state that the conflicts of interest that could result if an Index Provider has a proscribed relationship with a Trust, the Adviser, any Sub-Adviser, the Distributor, or promoter of a Fund include the ability of an affiliated person to manipulate the Underlying Index to the benefit or detriment of the Fund, as well as conflicts that may also arise with respect to the personal trading activity of personnel of the affiliated person who may have access to, or knowledge of, changes to an Underlying Index's composition methodology or the constituent securities in an Underlying Index prior to the time that information is publicly disseminated. Applicants believe that these conflicts of interest are not applicable to the Affected Funds because the Adviser is not part of the

[2] AlphaShares is the Index Provider for Guggenheim China Real Estate ETF, Guggenheim China Small Cap ETF, Guggenheim China All-Cap ETF, and Guggenheim China Technology ETF. Delta Global is the Index Provider for Guggenheim Shipping ETF.

[3] Applicants request that the requested order apply to any future series of the Trusts or other registered investment company advised by the Adviser or a person controlling, controlled by, or under common control with the Adviser that operates as an ETF (a "Future Fund") for which the Index Provider also serves as Sub-Adviser to another Fund or Future Fund or other registered investment company advised by the Adviser, or a person controlling, controlled by, or under common control with the Adviser (collectively "Subadvised Funds").

[4] Claymore Exchange-Traded Fund Trust 3, *et al.,* Investment Company Act Release No. 29256 (Apr. 23, 2010) (notice) and 29271 (May 18, 2010) (order).

same organization as either Index Provider. Accordingly, the Adviser will not be informed of any additions to or deletions from an Underlying Index tracked by an Affected Fund (each, an "Applicable Underlying Index") prior to other market participants or the general public. Applicants state that the Adviser therefore will not have any ability to manipulate the components of the Applicable Underlying Indexes for its own benefit, nor will it have an informational advantage over other market participants with regard to additions to or deletions from the Applicable Underlying Indexes. Applicants further state that the Adviser will not have any role in the (a) modification of an Applicable Underlying Index's methodology, (b) selection of an Applicable Underlying Index's constituents, or (c) calculation or dissemination of an Applicable Underlying Index's value, and shall have no access to the information involved with items (a)–(c) or any changes thereto prior to their public dissemination in advance of the rebalancing of an Applicable Underlying Index or any interim modification arising from any corporate action.

5. Applicants also state that the Adviser and the Index Providers have adopted policies and procedures designed to prevent the dissemination and improper use of non-public information in a manner similar to firewalls. Each of the Adviser, AlphaShares, and Delta Global has adopted written policies and procedures in accordance with rule 206(4)–7 under the Advisers Act, that contains: (a) A section that sets forth the applicable entity's insider trading policy and that includes the applicable entity's procedures to prevent and detect the misuse of material non-public information; and (b) the applicable entity's code of ethics which was adopted pursuant to rule 17j–1 under the Act and rule 204A–1 under the Advisers Act, which contains provisions reasonably necessary to prevent Access Persons (as defined in rule 17j–1) of the applicable entity from trading on the basis of, improperly disseminating or otherwise engaging in any improper use of nonpublic information.

6. Applicants further state that they will adopt, and will require AlphaShares and Delta Global to adopt, policies and procedures that require the Applicable Underlying Indexes to be transparent. Each of AlphaShares and Delta Global will maintain a publicly available Web site on which it will publish the basic concept of each Applicable Underlying Index and disclose (a) the composition methodology for each such Applicable Underlying Index ("Index Composition Methodology") and (b) the components and weightings of the components of each Applicable Underlying Index (as of each rebalancing or interim modification arising from a corporate action). Applicants note that the identity and weightings of the component securities of the Applicable Underlying Index will be readily ascertainable by a third party because the Index Composition Methodology will be publicly available. Although each of AlphaShares and Delta Global reserves the right to modify its Index Composition Methodology in the future, such modifications would not take effect until the applicable Index Provider has given the Calculation Agent (as defined below) and the investing public at least 60 days' prior written notice, disclosed on the publicly available Web site of such Index Provider, that such changes are being planned to take effect.[5] Each Underlying Index will be reconstituted or rebalanced no more frequently than on a monthly basis.

7. Applicants represent that any Index Provider to an existing Fund or a Future Fund that enters into a similar arrangement to serve as Sub-Adviser to a Subadvised Fund will be subject to the same policies and procedures as proposed herein with respect to AlphaShares and Delta Global. Applicants further represent that any relief granted pursuant to the application will only apply to an Index Provider whose affiliation with a Trust, the Adviser or any Sub-Adviser to a Fund, Distributor or promoter of a Fund arises from relationships such as those described in the application. Applicants acknowledge that Index Providers whose affiliation arises from relationships other than those described in the application may not serve as Index Provider to a Fund without additional exemptive relief.

[5] The "Calculation Agent" is the entity that will implement the Index Composition Methodology, calculate and maintain the Applicable Underlying Indexes, and calculate and disseminate the Applicable Underlying Index values. The Calculation Agent is not and will not be an affiliated person within the meaning of section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of a Trust, the Adviser, any Sub-Adviser, the Distributor, or a promoter of a Fund. The Calculation Agent will be instructed not to communicate any non-public information about the Applicable Underlying Indexes to anyone, but specifically not to the personnel of the Adviser with responsibility for the portfolio management of the Affected Funds. The Calculation Agent will be instructed to disseminate information about the daily constituents of the Applicable Underlying Indexes to the Adviser (on behalf of the Affected Funds) and the public at the same time.

Additional Changes to Prior Order

1. Applicants seek to amend the Prior Order to delete the relief granted from section 24(d) of the Act. Applicants believe that the deletion of the exemption from section 24(d) is warranted because the adoption of the summary prospectus should supplant any need by a Fund to use a product description ("Product Description").[6] The deletion of the relief granted with respect to section 24(d) of the Act from the Prior Order will also result in the deletion of related discussions in the Prior Applications, revision of the Prior Applications to delete references to Product Descriptions, including in the conditions, and the deletion of condition 5 to the Prior Order.[7]

2. The Prior Applications state that a Fund will hold, in the aggregate, at least 80 percent or 90 percent of its total assets in the securities that comprise the relevant Underlying Index ("Component Securities"), and investments that have economic characteristics that are substantially identical to the economic characteristics of the Component Securities of its Underlying Index. Applicants seek to amend the Prior Order to require a Fund to hold at least 80 percent of its total assets in Component Securities of its Underlying Index or in Depositary Receipts or to-be-announced transactions ("TBAs") representing Component Securities (or underlying securities representing Depositary Receipts, if Depositary Receipts are themselves Component Securities).

3. Applicants wish to amend the Prior Order to revise certain representations regarding a Fund's ability to invest in Depositary Receipts. The Prior Applications state, among other things, that a Fund will invest only in Depositary Receipts listed on a national securities exchange as defined in section 2(a)(26) of the Act and that all Depositary Receipts in which a Fund invests will be sponsored by the issuers of the underlying security, except in certain circumstances. Applicants seek to amend the Prior Applications to state that Depositary Receipts include American Depositary Receipts ("ADRs") and Global Depositary Receipts ("GDRs"). With respect to ADRs, the depositary is typically a U.S. financial institution, and the underlying

[6] Investment Company Act Release No. 28584 (Jan. 13, 2009) (the "Summary Prospectus Rule").

[7] Condition 5 states: Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Fund Shares to deliver a Product Description to purchasers of Fund Shares.

securities are issued by a foreign issuer. The ADR is registered under the Securities Act on Form F–6. ADR trades occur either on an Exchange or off-exchange. Rule 6620 of the Financial Industry Regulatory Authority ("FINRA") requires all off-exchange transactions in ADRs to be reported within 90 seconds and ADR trade reports to be disseminated on a real-time basis. With respect to GDRs, the depositary may be foreign or a U.S. entity, and the underlying securities may have a foreign or a U.S. issuer. All GDRs are sponsored and trade on a foreign exchange. No affiliated persons of applicants will serve as the depositary for any Depositary Receipts held by a Fund. A Fund will not invest in any Depositary Receipts that the Adviser deems to be illiquid or for which pricing information is not readily available.

4. Applicants also seek to amend the terms and conditions of the Prior Applications to provide that all representations and conditions contained in the Prior Applications that require a Fund to disclose particular information in the Fund's prospectus and/or annual report shall remain effective with respect to the Fund until the time the Fund complies with the disclosure requirements adopted by the Commission in the Summary Prospectus Rule. Applicants believe that the proposal to supersede the representations and conditions requiring certain disclosures in the Prior Applications is warranted because the Commission's amendments to Form N–1A with respect to ETFs as part of the Summary Prospectus Rule reflect the Commission's view with respect to the appropriate types of prospectus and annual report disclosures for an ETF.

5. Applicants also wish to amend the Prior Order to permit the personnel of the Adviser or any Sub-Adviser who are responsible for the designation and dissemination of Deposit Securities or Fund Securities to also select securities for purchase or sale by actively-managed accounts of the Adviser or Sub-Adviser. The Prior Applications currently state that such personnel will have no responsibilities for the selection of securities for purchase or sale by any actively-managed accounts of the Adviser or Sub-Adviser. Applicants state that the Codes of Ethics adopted by the Adviser and Distributor, among other procedures, adequately address any conflicts of interest. Applicants also note that the Commission more recently has granted exemptive relief with respect to index-based ETFs that does not contain the prohibition on adviser personnel designating securities for a creation or redemption with respect to such ETFs and also managing actively-managed accounts for the adviser.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the same conditions as those imposed by the Prior Order, except for condition 5 to the Prior Order, which will be deleted.[8]

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25819 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63050; File No. SR–Phlx–2010–137]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Anti-Internalization Functionality for NASDAQ OMX PSX

October 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 30, 2010, NASDAQ OMX PHLX LLC ("Phlx" 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 3307 to provide an optional anti-internalization functionality on NASDAQ OMX PSX ("PSX"). The text of the proposed rule change is available from the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to provide a voluntary anti-internalization function for the PSX System. Under the proposal, market participants entering orders under a specific market participant identifier ("MPID") may voluntarily direct that they not execute against other orders entered into the System under the same MPID.

Under the proposal, the System, if requested, will not execute orders entered under the same MPID against each other. Instead, the System will execute against all eligible trading interest of other market participants, in accordance with PSX's price-size execution priority, up to the point where an incoming order would interact with a resting order having the same MPID. In such a case, share amounts equal to the size of the portion of an incoming order that is designated by the order execution algorithm to interact with an order already in the System with the same MPID will be decremented from each order.

For example, if market participant ABCD had an order to sell 1,000 shares at $10 on the book, entered an order to buy 1,000 shares at $10, and the System allocated 100 shares of the incoming order to the resting ABCD order and 900 shares to other market participants' orders, the System would execute the 900 shares allocated to other market participants and would decrement, without execution, the remaining 100 shares of the incoming order as well as 100 shares from ABCD's resting order. Similarly, if ABCD had a resting order to sell 2,000 shares at $10, entered an order to buy 500 shares at $10, and the System allocated all 500 shares to the resting ABCD order, the System would cancel the incoming order and

[8] As noted above, all representations and conditions contained in the application and the Prior Applications that require a Fund to disclose particular information in the Fund's prospectus and/or annual report shall remain effective with respect to the Fund until the time that the Fund complies with the disclosure requirements adopted by the Commission in the Summary Prospectus Rule.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

decrement the resting order by 500 shares.

Anti-internalization functionality is designed to assist market participants in complying with certain rules and regulations of the Employee Retirement Income Security Act ("ERISA") that preclude and/or limit managing broker-dealers of such accounts from trading as principal with orders generated for those accounts. It can also assist market participants in reducing execution fees potentially resulting from the interaction of executable buy and sell trading interest from the same firm. The Exchange notes that use of the functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers. As such, market participants using anti-internalization functionality will need to take appropriate steps to ensure that public customer orders that do not execute because of the use of anti-internalization functionality ultimately receive the same execution price (or better) that they would have originally obtained if execution of the order was not inhibited by the functionality.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Sections 6(b)(5) of the Act,[4] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange notes that similar functionality has previously been approved for The NASDAQ Stock Market LLC (the "NASDAQ Exchange").[5]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] NASDAQ Exchange Rule 4757(a)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the benefits of this functionality to PSX market participants expected from the rule change can be implemented on or about October 8, 2010, when the Exchange expects to launch trading on PSX and have the technological changes in place to support the proposed rule change. The Commission notes that the proposal is similar to rules adopted by other exchanges.[10] For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Phlx has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change.

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] *Id.*

[10] NASDAQ Exchange Rule 4757(a)(4), BATS Exchange Rule 11.9(f) and NYSE ArcaEquities Rule 7.31(qq).

[11] For the purposes only of waiving the operative date 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).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx-2010–137 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–137. 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,[12] 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

[12] The text of the proposed rule change is available on Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* on the Commission's website at *http://www.sec.gov*, at Phlx, and at the Commission's Public Reference Room.

information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–137 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25808 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63054; File No. SR–EDGX–2010–13]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

October 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 30, 2010, the EDGX Exchange, Inc. (the "Exchange" or the "EDGX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

EDGX Exchange, Inc. ("Exchange" or "EDGX") proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c).

All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make several amendments to its fee schedule. First, it proposes to increase the fee for removing liquidity from $0.0029 per share to $0.0030 per share. Conforming amendments have been made to the B, V, Y, 3, and 4 Flags ("add liquidity" flags) to reflect this change. Secondly, it proposes to decrease the rebate for adding liquidity from $0.0029 per share to $0.0026 per share. Conforming amendments have been made to the N, W, and 6 flags ("remove liquidity" flags) to reflect this change. The Exchange believes that these rate changes will enable it to maintain a competitive position with regards to other away market centers.

Secondly, the Exchange proposes to incorporate a three tier rebate structure. The Exchange proposes to introduce the Mega Tier, which modifies the rebate incorporated in footnote 1 of the fee schedule. There are two alternative ways a Member can qualify for the Mega Tier rebate. First, footnote 1 of the fee schedule currently provides that Members can qualify for a rebate of $0.0032 per share for all liquidity posted on EDGX if they add or route at least 5,000,000 shares of average daily volume prior to 9:30 AM or after 4:00 PM (includes all flags except 6) AND add a minimum of 50,000,000 shares of average daily volume on EDGX in total. The Exchange proposes to amend the 50,000,000 share minimum to 25,000,000 shares. Secondly, footnote 1 further provides that Members will be provided a $0.0031 rebate per share for liquidity added on EDGX if the Member on a daily basis, measured monthly, posts 0.75% of the Total Consolidated Volume ("TCV") in average daily volume. TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities. The Exchange proposes to increase this rebate to $0.0032 per share.

Next, the Exchange proposes to introduce the Ultra Tier, in which a Member will be provided a $0.0031 rebate per share for liquidity added on EDGX if the Member posts 0.50% of TCV in average daily volume to EDGX, as measured on a monthly basis.

Finally, the Exchange propose to introduce the Super Tier, in which a Member will be provided a $0.0030 rebate per share for liquidity added on EDGX if the Member posts 10,000,000 shares or more of average daily volume to EDGX, as measured on a monthly basis.

The Exchange believes that the above pricing is appropriate since higher rebates are directly correlated with more stringent criteria. The Mega Tier rebate ($0.0032 per share) has the most stringent criteria, and is $0.0001 greater than the Ultra Tier rebate ($0.0031 per share) and $0.0002 greater than the Super Tier rebate ($0.0030 per share). For example, based on average TCV for August 2010 (7.2 billion), in order for a Member to qualify for the Mega Tier, the Member would have to post 54 million shares on EDGX. In order to qualify for the Ultra Tier, which has less stringent criteria than the Mega Tier, the Member would have to post 36 million shares on EDGX. Finally, the Super Tier has the least stringent criteria. In order for a Member to qualify for this rebate, the Member would have to post 10 million shares on EDGX. In addition, these rebates also result, in part, from lower administrative costs associated with higher volume.

Finally, the Exchange proposes to make a clarifying amendment to the price guarantee language found in footnote 1 of the schedule to clarify that the share amounts are based upon average daily volume.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on October 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. In addition, the rebates provided result, in part, from lower administrative costs associated with higher volume. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–EDGX–2010–13 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–EDGX–2010–13. 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,[8] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2010–13 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25744 Filed 10–13–10; 8:45 am]

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[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

[8] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGX, and at the Commission's Public Reference Room.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63066; File No. SR–OCC–2010–13]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change To Allow for Adjustments to the Settlement Price of Exchange-Designated Security Futures for All Cash Dividends or Distributions Paid by the Issuer of the Underlying Security

October 8, 2010.

I. Introduction

On August 19, 2010, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR–OCC–2010–13 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On August 25, 2010, OCC amended the proposed rule change. Notice of the proposal was published in the **Federal Register** on September 7, 2010.[2] The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

The primary purpose of this proposed rule change is to revise OCC's By-Laws to allow OCC to make adjustments to the settlement price of exchange-designated security futures for all cash dividends or distributions paid by the issuer of the underlying security. Under its current rules, OCC makes such adjustments only for "non-ordinary" dividends. However, OneChicago, LLC ("OneChicago") has informed OCC that it believes there is a demand for security futures that would be adjusted in response to all cash dividends or distributions. Accordingly, OCC is amending Section 3 of Article XII of its By-Laws to permit exchanges to designate certain security futures that will be adjusted for ordinary as well as "non-ordinary" cash dividends and distributions. Exchanges can continue to trade security futures that will be adjusted only in the event of a "non-ordinary" dividend or distribution.

For security futures subject to adjustment for all cash dividends or distributions, it will be the exchange's responsibility to inform OCC of the issuance of a cash dividend or

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 62801 (August 31, 2010), 75 FR 54410.

distribution and of the appropriate adjustment amount. Provided that such information (including any corrections thereto) is reported to OCC before an OCC-designated cut-off time prior to the ex-date, OCC will make the appropriate adjustment to the settlement price of the security futures contract. Such adjustments will be effective before the opening of business on the ex-date.[3] If the exchange fails to report dividend or distribution information to OCC on a timely basis or reports incorrect dividend or distribution information to OCC, then the exchange will be able to report such information or corrected information to OCC on the ex-date, and OCC will effect the adjustment as soon as practicable thereafter.[4] In the event the exchange already opened trading in the security futures contracts affected thereby, the exchange will provide OCC with direction on whether such trades should be cleared or disregarded as provided for in Article VI, Section 7 of OCC's By-Laws. Pursuant thereto, disregarded transactions will be deemed null and void and given no effect. These procedures are intended not only to preserve OCC's ability to initiate and conduct nightly processing on a timely basis but also to provide the exchange with the opportunity to report to OCC dividend or distribution information that was not available to it before OCC's processing cut-offs or to correct erroneously reported information so that there is an appropriate adjustment to the settlement price for the affected contracts.

In connection with OneChicago's proposal, OneChicago and OCC also have agreed to amend the Security Futures Agreement for Clearing and Settlement Services, dated April 1, 2002, ("Clearing Agreement") by entering into Amendment No. 1 thereto.[5] Amendment No. 1 would amend Section 5 of the Clearing Agreement to permit OneChicago to designate those security futures contracts for which adjustments will be made in response to all cash dividends or distributions of the underlying securities and to set forth OneChicago's obligation to furnish OCC with notice of all relevant information regarding such dividends or distributions so that OCC can adjust the settlement price of the affected security future as described above. Amended Section 5 further extends the current indemnification provided by OneChicago to OCC to cover losses resulting from OCC's adjustment of the settlement prices of security futures in accordance with dividend or distribution information supplied by OneChicago or OCC's failing to adjust in the event OneChicago did not supply OCC with information regarding such an adjustment.

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of security transactions and generally to protect investors and the public interest.[6] The Commission believes that OCC's rule change is consistent with this Section because the rule change should better enable OCC to promptly and accurately clear and settle security futures contracts for which an exchange has designated that the settlement prices will be adjusted to reflect the issuance of all cash dividends or distributions on the underlying security.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder. In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2010–13) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25864 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

[3] The standard method for adjusting futures contracts in response to cash distributions is to decrease the prior day's settlement price by the amount of the dividend. This adjustment is effective at the opening of business on the ex-distribution date and parallels the adjustment made to the price of the underlying stock by the securities exchanges on the ex-distribution date. It is intended to ensure that no futures mark-to-the-market attributable to the adjustment made to the stock price for the dividend will occur.

[4] OCC also proposes to add Interpretation and Policy .10 to Article XII, Section 3 to provide that officially reported settlement prices will not be adjusted (other than as provided for in the By-Laws and Rules) except in extraordinary circumstances. The Interpretation further provides that in no event will a completed settlement be adjusted due to errors discovered thereafter. This latter provision is intended to preserve the finality of money settlements should it later be determined that an officially reported settlement price was erroneous. The new Interpretation is based on existing provisions of OCC's By-Laws. *See, e.g.,* Article XIV, Section 6, Interpretation and Policy .01; Article XVI, Section 4, Interpretation and Policy .01; and Article XVII, Section 4, Interpretation and Policy .01.

[5] Amendment No. 1 will be executed after the effectiveness of this filing.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63063; File No. SR–NASDAQ–2010–126]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make a Conforming Change to NASDAQ Rules

October 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to make a conforming change to Rule 4758 to reflect prior effectiveness of filings allowing routing of orders to a facility of an exchange that is an affiliate of NASDAQ. NASDAQ proposes to implement the rule change concurrent with the launch of cash equity trading on NASDAQ OMX PSX, which is currently scheduled to occur on October 8, 2010. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASDAQ OMX Group, Inc. ("NASDAQ OMX") owns three U.S. registered securities exchanges—NASDAQ, NASDAQ OMX PHLX, Inc. ("PHLX") and NASDAQ OMX BX, Inc. ("BX"). In addition, NASDAQ OMX currently indirectly owns Nasdaq Execution Services, LLC ("NES"), a registered broker-dealer and a member of PHLX. Thus, NES is an affiliate of each of NASDAQ, PHLX and BX.

PHLX has received approval to launch NASDAQ OMX PSX ("PSX")[3] as a new platform for trading NMS stocks (as defined in Rule 600 under Regulation NMS).[4] Although PSX will not route to other market centers, PSX will receive orders routed to it by other market centers, including NASDAQ.

In SR–NASDAQ–2010–100,[5] NASDAQ submitted a proposed rule change that authorized it to route orders to PSX through NES without checking the NASDAQ book. In addition, in SR–PHLX–2010–79, PHLX received approval, on a pilot basis, to receive orders routed to it by NES that did not check the NASDAQ book prior to routing.[6] The change to NASDAQ rules was reflected in an amendment to Rule 4751, but should have also been reflected in an amendment to Rule 4758. Accordingly, NASDAQ is submitting this rule change to make the conforming change.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change would make a conforming change to NASDAQ rules to reflect previously adopted rule changes.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] NASDAQ requests that the Commission waive the 30-day pre-operative delay contained in Exchange Act Rule 19b–4(f)(6)(iii).[11] NASDAQ requests such a waiver because the proposed rule change merely conforms the text of Rule 4758 to rule changes made by SR–NASDAQ–2010–100 and SR–PHLX–2010–79 that have already become effective, and such waivers will allow the proposed rule change to be in effect on October 8, 2010, the date on which trading will commence on PSX. The Commission believes that waiving the 30-day operative delay[12] is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–126 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–126. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business

[3] Securities Exchange Act Release No. 62877 (September 9, 2010), 75 FR 56633 (September 16, 2010) (SR–PHLX–2010–79).

[4] 17 CFR 242.600.

[5] Securities Exchange Act Release No. 62736 (August 17, 2010), 75 FR 51861 (August 23, 2010) (SR–NASDAQ–2010–100).

[6] *Supra* n.3.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–126 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25863 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63064; File No. SR–Phlx–2010–136]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 1015

October 7, 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 30, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delete Rule 1015, Execution Guarantees (with the exception of subparagraph (a)(vi)), which is outdated and should have been deleted previously. The Exchange also proposes to delete Options Floor Procedure Advice ("Advice") A–11, which contains corresponding language. The Exchange proposes to move subparagraph (a)(vi) of both Rule 1015 and Advice A–11 to Rule 1063.02, which governs floor broker activity.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to update and correct the rules by deleting two outdated rules. Generally, the execution of orders is now governed by Rules 1080 and 1082, among others. Rule 1015 refers to execution guarantees, disseminated size and "trade or fade" provisions that together have become obsolete due to the combination of the adoption of firm quote obligations in options and increased automation; specifically, the disseminated size is no longer an artificial size that requires this rule to apportion responsibility to "floor traders" to reach that minimum size. With the advent of an actual size in options along with automatic execution at the displayed size, these provisions became outdated.

With respect to Advice A–11, it tracks the language of Rule 1015. Historically, Advices replicated the provisions of the Exchange's rules that were most pertinent for the trading floor community to keep handy, in lieu of the large, unwieldy rulebook; the Exchange adopted, for many years, both rules and advices that contained nearly identical language where the advice was the subject of a fine schedule under the Exchange's minor rule plan in order for the trading floor to have easy access to these provisions (which the Exchange printed and distributed) and in order for those persons who administered fines to have easy access to consult the applicable fine schedules.[3]

The Exchange proposes to move Rule 1015(a)(vi) to Rule 1063.02 because it governs floor broker behavior and continues to be relevant.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[4] in general, and furthers the objectives of Section 6(b)(5) of the Act[5] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by deleting obsolete provisions and generally providing clarity to the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Advices are administered as part of the Exchange's minor rule plan; the Exchange proposes to remove Advice A–11 from the minor rule plan.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx has satisfied this requirement.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–136 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–136. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2010–136 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25820 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63057; File No. SR–NYSE–2010–70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Amend the Exchange Price List

October 6, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 30, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its 2010 Price List to assess monthly fees for the use of all ports that provide connectivity to its equity trading systems. The monthly fee for ports will be $100 per pair per month up to five pairs, then $500 for each additional five pairs. In its table of credits applicable to Supplemental Liquidity Providers ("SLPs"), the Exchange is modifying language referencing the SLP quoting requirement to reflect a recent rule filing that changed the standard from 3% to 10% of the regular trading day in any calendar month in order to receive a financial rebate and also added a volume requirement. The amended pricing will take effect on October 1, 2010. The text of the proposed rule change is available at the Exchange, at *http://www.nyse.com,* at the Commission's Public Reference Room, and on the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its 2010 Price List to assess monthly fees for the use of all ports that provide connectivity to its equity trading systems. A number of other markets already charge such fees, but the Exchange has not previously done so.

The level of activity with respect to a particular port will not affect the assessment of monthly fees, so even if a particular port that is available to a participant is not used, the participant will still be billed for that port. The monthly fee for ports will be $100 per pair per month up to five pairs, then $500 for each additional five pairs. For example, the fee for seven pairs of ports will be $1,000 per month. Billing for ports will be based on the number of ports on the third business day prior to the end of the month.

In its table of credits applicable to SLPs, the Exchange is modifying language referencing the SLP quoting requirement to reflect a recent rule filing that changed the standard from 3% to 10% of the regular trading day in any calendar month in order to receive a financial rebate and also added a volume requirement.[4]

These changes are intended to be effective immediately for all transactions beginning October 1, 2010.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 62791 (August 30, 2010), 75 FR 54411 (September 7, 2010) (File No. SR–NYSE–2010–60).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed on its members by the NYSE.

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–NYSE–2010–70 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–NYSE–2010–70. 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 Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2010–70 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25747 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63056; File No. SR–NYSEArca–2010–87]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fee Schedule

October 6, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 30, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange through its wholly-owned subsidiary NYSE Arca Equities, Inc. ("NYSE Arca Equities") proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the "Schedule"). While changes to the Schedule pursuant to this proposal will be effective on filing, the changes will become operative on October 1, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and the Exchange's Web site at *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Effective October 1, 2010, the Exchange proposes to amend the Schedule to modify the structure of the transaction credits it provides to Lead Market Makers ("LMMs") for providing displayed liquidity in the NYSE Arca marketplace primary listed securities in which they are registered as the LMM. Currently, an LMM receives a rebate of $0.004 per share for execution of orders that provide displayed liquidity in such a security, regardless of the trading volume in the security. The Exchange is proposing to replace this with a tiered rebate structure that is based on the consolidated average daily volume ("CADV") of the security in the previous month. Specifically, the transaction credits under the new structure would be as follows:

- $0.0035 per share for orders that provide displayed liquidity in securities that have a CADV in the previous month greater than 5 million shares
- $0.004 per share for orders that provide displayed liquidity in securities that have a CADV in the previous month of between 1 million and 5 million shares inclusive
- $0.0045 per share for orders that provide displayed liquidity in securities that have a CADV in the previous month of less than 1 million shares

In addition, for each rate level of trade related fees in the Schedule, the Exchange proposes to institute a fee of $0.0005 per share for orders executed in the Opening Auction or Market Order Auction, as those terms are defined in NYSE Arca Equities Rule 7.35. The fee will be applicable to Tape A, Tape B and Tape C securities, and will be capped at $10,000 per month per Equity Trading Permit ID.

Additionally, the Exchange proposes to change the pricing for Mid-Point Passive Liquidity ("MPL") Orders. Currently the rebate for MPL Orders that provide liquidity, as well as the fee for orders that take liquidity, is $0.0010 in Tape A, Tape B and Tape C securities. Under this proposal, MPL orders will receive a rebate of $0.0015 for orders that provide liquidity and be charged a fee of $0.0025 for orders that take liquidity in Tape A, Tape B and Tape C securities. These changes apply to all pricing levels.

Finally, the Exchange proposes to assess monthly fees for the use of all ports that provide connectivity to its equity trading systems. A number of other markets already charge such fees, but the Exchange has not previously done so.

The level of activity with respect to a particular port will not affect the assessment of monthly fees, so even if a particular port that is available to a participant is not used, the participant will still be billed for that port. The monthly fee for ports will be $100 per pair per month up to five pairs, then $500 for each additional five pairs. For example, the fee for seven pairs of ports will be $1,000 per month. Billing for ports will be based on the number of ports on the third business day prior to the end of the month.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations and other market participants will be charged the same amount and access to the Exchange's market is offered on fair and non-discriminatory terms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed on its members by NYSE Arca.

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–NYSEArca–2010–87 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–87. 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 the filing also will be available for inspection and copying at the principal office of the Exchange.[8] All comments received will be posted without change; the Commission does not edit personal identifying information from

[4] 15 U.S.C. 78f(b). [sic]

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov.*

submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–87 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25746 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63055; File No. SR–NASDAQ–2010–124]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the NASDAQ Stock Market LLC Relating to Fees During Opening Cross

October 6, 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 29, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify Exchange Rule 7050 governing pricing for NASDAQ members using the NASDAQ Options Market ("NOM"), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend the applicability of its Fees for Execution of Contracts on the NASDAQ Options Market to the Opening Cross.[3]

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on October 1, 2010.

The text of the proposed rule change is set forth below. Proposed new text is in *italics* and deleted text is in **[**brackets**]**.

* * * * *

7050. NASDAQ Options Market

The following charges shall apply to the use of the order execution and routing services of the NASDAQ Options Market for all securities.

(1) Fees for Execution of Contracts on the NASDAQ Options Market

FEES AND REBATES (PER EXECUTED CONTRACT)

	Customer	Firm	Non-NOM market maker	NOM market maker
Penny Pilot Options:	.....	.....	.....	.....
Rebate to Add Liquidity	$0.32	$0.10	$0.25	$0.30
Fee for Removing Liquidity	$0.43	$0.45	$0.45	$0.45
NDX and MNX:	.....	.....	.....	.....
Rebate to Add Liquidity	$0.10	$0.10	$0.10	$0.20
Fee for Removing Liquidity	$0.50	$0.50	$0.50	$0.40
All Other Options:	.....	.....	.....	.....
Fee for Adding Liquidity	$0.00	$0.45	$0.45	$0.30
Fee for Removing Liquidity	$0.43	$0.45	$0.45	$0.45
Rebate to Add Liquidity	$0.20	$0.00	$0.00	$0.00

(2) Opening Cross

All orders executed in the Opening Cross*:* [No Charge]

Customer orders will receive the Rebate to Add Liquidity during the Exchange's Opening Cross, unless the contra-side is also a Customer. Firms, Non-NOM Market Makers and NOM Market Makers will be assessed the Fee for Removing Liquidity during the Exchange's Opening Cross.

(3) Closing Cross

* * * * *

The text of the proposed rule change is available on the Exchange's website at *http://www.nasdaqomx.cchwallstreet.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is proposing to modify Rule 7050 governing the fees assessed for options orders entered into NOM. Specifically, NASDAQ is proposing to modify pricing for its Fees for Execution of Contracts on NOM with respect to orders during the Exchange's Opening Cross. The Exchange believes that its proposal will incentivize routers to send

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Chapter VI, Section 8 titled Nasdaq Opening Cross.

increased order flow during the Opening Cross.

The Exchange currently does not assess transaction fees during the Opening Cross. The Exchange is proposing to amend its fees to pay a rebate for Customer orders that are executed during the Opening Cross. The Exchange would not pay the rebate if a Customer were the contra-side of the trade.

Additionally, the Exchange is proposing to assess a Fee for Removing Liquidity to Firms, Non-Nom Market Makers and NOM Market Makers for executed transactions during the Exchange's Opening Cross.

While changes pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative for transactions on October 1, 2010.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. The Exchange believes the proposed amendments to the fees and rebates for adding and removing liquidity are equitable and reasonable because they are within the range of fees assessed by other exchanges employing similar pricing schemes and that the proposed fees apply fairly to all similarly situated participants on NOM for reasons discussed in greater detail below.

With respect to the proposed rebates to Customer for executing orders during the Opening Cross, the Exchange believes that Customers will benefit from this rebate. Currently, there is no rebate and the rebate will only be proposed to be paid if another Customer is not on the contra-side of the transactions. This proposal will benefit Customers and incentivize market participant to route Customer orders to the Exchange. For these reasons, the Exchange believes that this proposal is both equitable and reasonable.

The Exchange's proposal to assess a Fee for Removing Liquidity on all market participants other than Customers, namely Firms, Non-NOM Market Makers and NOM Market Makers, during the Opening Cross is reasonable because the fees are within the range of fees assessed by other exchanges employing similar pricing schemes. The proposal is equitable because it is being equally assessed on all market participants, other than Customers.

NASDAQ is one of eight options market in the national market system for standardized options. It is a mature, robust market that is highly competitive. Joining NASDAQ and electing to trade options is entirely voluntary. Under these circumstances, NASDAQ's fees must be competitive, fair and just in order for NASDAQ to attract order flow, execute orders, and grow as a market. NASDAQ thus believes that its fees are equitable, fair and reasonable and consistent with the Exchange Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml*);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2010–124 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–124. 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 inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2010–124 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25745 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63053; File No. SR–EDGA–2010–14]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

October 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 2010, the EDGA Exchange, Inc. (the "Exchange" or the "EDGA") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) by making an amendment to its fee schedule.

All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the fees and rebates for adding and removing liquidity. For adding liquidity, the fee is proposed to be increased from $0.0002 per share to $0.00025 per share. Conforming amendments have been made to the B, V, Y, 3, and 4 Flags ("add liquidity" flags) to reflect this change. For removing liquidity, the rebate is proposed to be decreased from $0.0002 per share to $0.00015 per share. Conforming amendments have been made to the N, W, and 6 flag ("remove liquidity" flags) to reflect this change. In addition, Flag "I" (routed to EDGX) is proposed to increased from $0.0029 per share to $0.0030 per share to reflect the anticipated increase on EDGX for October for removing liquidity (from $0.0029 per share to $0.0030 per share). The Exchange believes that these rate changes will enable it to maintain a competitive position with regards to other away market centers.

The Exchange also proposes to make a technical amendment to footnote 2 to clarify that the rate of $0.0010 applies to when a Member adds greater than 1,000,000 shares *hidden* on a daily basis, measured monthly (emphasis added).

EDGA Exchange proposes to implement these amendments to the Exchange fee schedule on October 5, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [6] and Rule 19b–4(f)(2) [7] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–EDGA–2010–14 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–EDGA–2010–14. This file

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 19b–4(f)(2).

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,[8] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2010–14 and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25743 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63040; File No. SR–NASDAQ–2010–128]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Requirements To Qualify for Credits as a Designated Liquidity Provider Under Rule 7018(i)

October 5, 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 October 1, 2010, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ proposes to modify the requirements to qualify for credits as a designated liquidity provider under Rule 7018(i) and to make a minor technical change. NASDAQ will implement the proposed change on October 1, 2010. The text of the proposed rule change is below. Proposed new language is *italicized*. Deleted language is **[**bracketed**]**.

* * * * *

7018. Nasdaq Market Center Order Execution and Routing

(a)–(h) No change.

(i) Notwithstanding the foregoing, the following charges shall apply to transactions in a Qualified Security by one of its Designated Liquidity Providers:

Charge to Designated Liquidity Provider entering Order that executes in the Nasdaq Market Center or attempts to execute in the Nasdaq Market Center prior to routing:	$0.003 per share executed for securities priced at $1 or more per share (For securities priced at less than $1 per share, the normal execution fee under 7018(a) will apply).
Credit to Designated Liquidity Provider providing *displayed* liquidity through the Nasdaq Market Center:	$0.004 per share executed (or $0, in the case of executions against Quotes/Orders in the Nasdaq Market Center at less than $1.00 per share), *up to 10 million shares average daily volume. Normal credits under 7018(a) apply to shares greater than 10 million average daily volume and non-displayed liquidity.*

For purposes of this paragraph:

(1) A security may be designated as a "Qualified Security" if:

(A) it is an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, or 5720;

(B) **[**there has been no time at which its average daily volume on Nasdaq has exceeded 10,000,000 shares during two calendar months of any three calendar-month period; and

(C)**]** it has at least one Designated Liquidity Provider.

[The security will cease to be a Qualified Security at the end of the second calendar month that causes the condition described in paragraph (B) not to be satisfied.**]**

(2) A "Designated Liquidity Provider" *or* "*DLP*" is a registered Nasdaq market maker for a Qualified Security that has committed to maintain minimum performance standards. **[**Designated Liquidity Providers**]***A DLP* shall be selected by Nasdaq based on factors including, but not limited to, experience with making markets in exchange-traded funds and index-linked securities, adequacy of capital, willingness to promote Nasdaq as a marketplace, issuer preference, operational capacity, support personnel, and history of adherence to Nasdaq rules and securities laws. Nasdaq may limit the number of Designated Liquidity Providers in a security, or modify a previously established limit, upon prior written notice to members.

The minimum performance standards applicable to a *DLP***[**Designated Liquidity Provider**]** may be determined from time to time by Nasdaq and may vary depending on the price, liquidity, and volatility of the Qualified Security in which the *DLP***[**Designated Liquidity Provider**]** is registered. The performance measurements will include (A) percent of time at the national best bid (best offer) ("NBBO"); (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread.

(3) If a DLP does not meet the performance measurements for a given month, fees and credits will revert to the normal schedule under 7018(a). If a DLP does not meet the stated performance measurements for 3 out of the past 4 months, the DLP is subject to forfeit of DLP status for that instrument, at NASDAQ's discretion. A DLP must provide 30 days written notice if it wishes to withdraw its registration in a Qualified Security.

(j) No change.

* * * * *

[8] The text of the proposed rule change is available on Exchange's Web site at *http://www.directedge.com,* on the Commission's Web site at *http://www.sec.gov,* at EDGA, and at the Commission's Public Reference Room.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ 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

NASDAQ is proposing to modify the criteria required of Designated Liquidity Providers to qualify for credits in transactions involving a Qualified Security.[3] Currently, a Designated Liquidity Provider ("DLP") may receive a credit of $0.004 per share executed (or $0, in the case of executions against Quotes/Orders in the Nasdaq Market Center at less than $1.00 per share) if it provides liquidity in a Qualified Security to the Nasdaq Market Center. A Qualified Security is defined by three criteria in Rule 7018(i)(1): (A) It must be an exchange-traded fund or index-linked security listed on Nasdaq pursuant to Nasdaq Rules 5705, 5710, or 5720; (B) there has been no time at which its average daily volume on Nasdaq has exceeded 10 million shares during two calendar months of any three calendar-month period; and (C) it has at least one Designated Liquidity Provider. A security will cease to be classified as a Qualified Security at the end of the second calendar month that causes the condition described in paragraph (B) not to be satisfied. NASDAQ is eliminating requirement "(B)" of the definition of Qualified Security together with related language under the rule, and will now permit DLPs to qualify for the credit in a Qualified Security with an average daily volume during the month of up to 10 million. Any average daily volume for the month in the Qualified Security in excess of 10 million would be assessed the standard rates found under Rule 7018(a). As such, a DLP will be able to receive the higher $0.004 credit on up to 10 million shares of average daily volume per month in a Qualified Security, even if the DLP exceeds 10 million in average daily volume in a given month.

NASDAQ is also limiting the availability of the credit to only DLPs providing displayed liquidity through the Nasdaq Market Center. A primary purpose of the credit program in Qualified Securities is to promote an active and liquid trading market in ETFs and ILSs. As currently written, however, Rule 7018(i) provides a credit for any type of liquidity provided by a DLP, even if the liquidity is not-displayed and thus not promoting price discovery through active public display. NASDAQ believes that the program should only award DLPs that make markets in a Qualified Security by providing displayed liquidity.

NASDAQ is adding new rule text describing the consequences of failing to meet the DLP minimum performance criteria described in Rule 7018(i)(2). The minimum performance standards applicable to a DLP are determined by NASDAQ and may vary depending on the price, liquidity, and volatility of a particular Qualified Security. These performance measurements include: (A) Percent of time at the NBBO; (B) percent of executions better than the NBBO; (C) average displayed size; and (D) average quoted spread. NASDAQ may remove DLPs that do not meet performance standards, or that decide to change their status, at any time. NASDAQ is providing clarifying information regarding the consequences of failing to meet the minimum performance standards. Specifically, if a DLP fails to meet minimum performance standards in a given month, fees will revert to the standard schedule of fees and credits under Rule 7018(a). If a DLP fails to meet minimum performance standards for three out of the past four months, it will lose DLP status for that instrument. NASDAQ is imposing a thirty-day prior notice obligation on DLPs seeking to withdraw registration in a Qualified Security. This thirty-day notice requirement will ensure that NASDAQ has adequate time to assign a new DLP, thus avoiding any disruption in market quality that may be caused by the absence of an assigned DLP.

Last, NASDAQ is making a non-substantive technical change to the rule by providing the acronym "DLP" as an alternative to "Designated Liquidity Provider" for use in the rule text.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system that NASDAQ operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. NASDAQ believes that by allocating pricing benefits to market makers that make tangible commitments to enhancing market quality for ETFs and ILSs listed on NASDAQ, the proposal will encourage the development of new financial products, provide a better trading environment for investors in ETFs and ILSs, and encourage greater competition between listing venues for ETFs and ILSs. The changes proposed herein are designed to further promote liquid markets in ETFs and ILSs, and to ensure that DLPs are provided adequate incentives to continue to meet minimum standards to participate in the credit program.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ believes that the proposed rule change will encourage greater competition among venues that list ETFs and ILSs, and will further strengthen the quality of the NASDAQ market as a venue for transactions in ETFs and ILSs. Accordingly, NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission

[3] The Designated Liquidity Provider pricing incentive program was implemented in August 2007. *See* Securities Exchange Act Release No. 56130 (July 25, 2007), 72 FR 42163 (August 1, 2007) (SR–NASDAQ–2007–061).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–128 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–128. 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 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 offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–128, and should be submitted on or before November 4, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25741 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63051; File No. SR–Phlx–2010–135]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Collars for Unpriced Orders

October 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on September 29, 2010, NASDAQ OMX PHLX LLC ("Phlx" 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 4751 to include system functionality that will cancel any portion of an unpriced order submitted to NASDAQ OMX PSX ("PSX") that would execute at a price that is more than $0.25 or 5 percent worse than the national best bid and offer at the time the order initially reaches the Exchange, whichever is greater. The text of the proposed rule change is available from the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com*, at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to protect market participants by reducing the risk that unpriced orders, also known as market orders, will execute at prices that are significantly worse than the national best bid and offer ("NBBO") at the time the Exchange receives the order.[3] The Exchange believes that most market participants expect that their order will be executed at its full size at a price reasonably related to the prevailing market. However, participants may not be aware that there is insufficient liquidity at or near the NBBO to fill the entire order, particularly for more thinly-traded securities.

Prior to the launch of trading on PSX, the Exchange is proposing to implement functionality in its trading systems that would cancel any portion of unpriced orders that would execute on PSX at a price that is the greater of $0.25 or 5 percent worse than the NBBO at the time the Exchange receives the order. Unpriced orders that would be subject to this calculation and potential cancellation are defined in Phlx Rule 3301(f)(9) as "Unpriced Orders."

The following example illustrates how the Unpriced Order process would work. A market participant submits a Market Peg order to buy 500 shares. The NBBO is $6.00 bid by $6.05 offer, with 100 shares available on each side. PSX has 100 shares available at the $6.05 to sell at the offer price and also has reserve orders to sell 100 shares at $6.32 and 400 shares at $6.40. No other market center is publishing offers to sell the security at prices in the range of $6.05 to $6.40.

In this example, the Unpriced Order would be executed in the following manner:

- 100 shares would be executed by PSX at the $6.05;
- 100 shares would be executed by PSX at $6.32 (more than $0.25 but less than 5 percent worse than the NBBO); and
- 200 shares, representing the remainder of the Unpriced Order, would be cancelled because the remaining

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] It should be noted that the circumstances under which it is possible to enter a market order in PSX are limited to market peg orders that are entered when PSX has some liquidity at the NBBO on the side of the market to which the order pegs.

liquidity available at $6.40 is more than 5 percent worse than the NBBO.

The Exchange believes that market participants who wish to trade at prices further away from the NBBO than the Unpriced Order thresholds would permit, may still accomplish their strategy by submitting a marketable limit order to the Exchange. In the example above, a market participant with such a strategy could have input a limit order with a price of $7.00, which would have executed up to its full size provided liquidity is available.

The Exchange's rule change implements a rule similar to rules already in place at The NASDAQ Stock Market LLC, BATS Exchange, Inc., and NYSE Arca, Inc.[4]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act in general,[5] and furthers the objectives of Section 6(b)(5) of the Act in particular,[6] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by avoiding execution of unpriced orders on the Exchange at prices that are significantly worse than the NBBO at the time the order is initially received by the Exchange. The Exchange believes that the NBBO provides reasonable guidance of the current value of a given security and therefore that market participants should have confidence that their unpriced orders will not be executed at a significantly worse price than the NBBO.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. The Commission notes (i) the proposal is similar to existing thresholds on market orders adopted by The NASDAQ Stock Market LLC, BATS Exchange, Inc., and NYSE Arca, Inc; (ii) it presents no novel issues; and (iii) the functionality is voluntary, and it may provide a benefit to market participants. For these reasons, the Commission believes it is consistent with the protection of investors and the public interest to waive the 30-day operative delay, and hereby grants such waiver.[11]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–135 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–135. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[12] 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–135 and should be submitted on or before November 4, 2010.

[4] *See* NASDAQ Rule 4751(f)(13); BATS Rule 11.9; NYSE Arca Equities Rule 7.31(a).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Phlx has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date on which the Exchange filed the proposed rule change.

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] *Id.*

[11] For the purposes only of waiving the operative date 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).

[12] The text of the proposed rule change is available on Exchange's website at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* on the Commission's website at *http://www.sec.gov,* at Phlx, and at the Commission's Public Reference Room.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–25809 Filed 10–13–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 7209]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Junior Faculty Development Program

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/E/EUR–11–05.

Catalog of Federal Domestic Assistance Number: 19.011.

Key Dates:

Application Deadline: January 6, 2011.

Executive Summary

The Office of Academic Exchange Programs/European Programs Branch of the Bureau of Educational and Cultural Affairs (ECA/A/E) announces an open competition for the Junior Faculty Development Program (JFDP). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to administer the program in cooperation with ECA. Program participants will be university faculty in the early stages of their careers from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Montenegro, Serbia, Tajikistan, Turkmenistan, and Uzbekistan. The recipient organization, in close coordination with the Public Affairs Sections (PAS) of the U.S. Embassies, will recruit and select candidates for the program in each country, with the exception of Uzbekistan where recruitment will be managed by the U.S. Embassy in Tashkent. The recipient organization will identify U.S. colleges and universities to host participants for a one-semester, non-degree program. The recipient organization for this program will be responsible for the financial management of the program, will support and oversee the activities of the fellows throughout their stay in the United States, and will plan for follow-on activities in the participants' home countries. Pending the availability of funds, the total amount of funding requested from ECA may not exceed $1,497,000 and should support three to six participants per participating country, for a total of at least 70 fully funded participants.

I. Funding Opportunity Description:

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose

The Junior Faculty Development Program (JFDP) will offer full fellowships to university-level instructors in the early stages of their careers. Program participants will have a strong potential for leadership in their disciplines, an interest in broadening their knowledge of the subjects they teach, and a desire to develop and maintain on-going contacts between their home and host institutions.

Recruitment for the 2012 cohort of JFDP fellows should begin immediately once the cooperative agreement is awarded. JFDP fellows will be selected through an open, merit-based competition. JFDP fellows will attend U.S. universities for one academic semester to work together with faculty mentors, to audit courses in order to broaden their knowledge in their fields of study, and to acquire a first-hand understanding of the U.S. system of higher education. The JFDP will encourage fellows to develop professional relationships with the U.S. academic community, to forge ties between their U.S. colleagues and colleagues in their home countries, and to share their experiences with students and faculty at their home institutions. Throughout their stay in the United States, JFDP fellows will audit courses, attend conferences and seminars, and whenever possible, teach a course or give lectures.

The major goal of the program is to provide opportunities for academics from the participating countries to exchange ideas with U.S. academics in their respective fields of teaching, and to increase collaboration and cooperation between universities in the United States and the participating countries. Participation in the JFDP under this award is restricted to university instructors in the humanities and social sciences from Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Croatia, Georgia, Kazakhstan, Kosovo, Kyrgyzstan, Macedonia, Montenegro, Serbia, Tajikistan, Turkmenistan, and Uzbekistan.

Programs must comply with J–1 Visa regulations. It is anticipated that this cooperative agreement will begin on or about March 1, 2011, subject to the availability of funds. Please refer to the Solicitation Package for further information.

In a cooperative agreement, ECA/A/E is substantially involved in program activities above and beyond routine monitoring. ECA/A/E activities and responsibilities for this program are as follows:

(1) Participating in the design and direction of program activities;

(2) Approval of key personnel;

(3) Approval and input for all program agendas, materials, and timelines;

(4) Guidance in execution of all project components;

(5) Arrangement for State Department speakers during workshops;

(6) Assistance with SEVIS-related issues;

(7) Assistance with participant emergencies;

(8) Providing background information related to participants' home countries and cultures;

(9) Liaison with Public Affairs Sections of the U.S. Embassies and country desk officers at the State Department;

(10) Participating in selection of evaluation mechanisms.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY 2011.

Approximate Total Funding: Pending the availability of funds, $1,497,000.

Approximate Number of Awards: 1.

Approximate Average Award: $1,497,000.

Anticipated Award Date: Pending availability of funds, March 1, 2011.

Anticipated Project Completion Date: December 31, 2012.

[13] 17 CFR 200.30–3(a)(12).

Additional Information

Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant or cooperative agreement for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. *Cost Sharing or Matching Funds:* There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $1,497,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Office of Academic Exchange Programs, *ECA/A/E/EUR, SA–5, Fourth Floor,* U.S. Department of State, 2200 C Street, NW., Washington, DC 20037, *202–632–3237* and *GradKE@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/E/EUR–11–05 when making your request. Alternatively, an electronic application package may be obtained from grants.gov. *Please see* section IV.3f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Karene Grad and refer to the Funding Opportunity Number ECA/A/E/EUR–11–05 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/grants/open2.html,* or from the Grants.gov Web site at *http://www.grants.gov*.

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. **Please Note**: Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs places critically important emphases on the security and proper administration of the Exchange Visitor (J visa) Programs and adherence by award recipients and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of the Exchange Visitor Programs as set forth in 22 CFR 62, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. The award recipient will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: Office of Designation, Private Sector Programs Division, U.S. Department of State, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037.

Please refer to Solicitation Package for further information.

IV.3d.2 Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation

Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.,* surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3d.4. Describe your plans for: *i.e.* sustainability, overall program management, staffing, coordination with ECA and PAS or any other requirements etc.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a

comprehensive budget for the entire program. The Bureau anticipates awarding one award in the amount of $1,497,000 to support 70 fully-funded fellows, with three to six fellows per participating country. Applicant organizations are encouraged, through cost sharing and other methods, to provide as many fellowships as possible based on estimated funding. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

(1) Overseas recruitment and selection of candidates;

(2) Participant travel expenses, stipends, accident and sickness coverage, visa fees, professional development costs;

(3) Orientation(s) and workshop(s);

(4) Host university fees;

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission

Application Deadline Date: January 6, 2011.

Reference Number: ECA/A/E/EUR–11–05.

Methods of Submission: Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (*i.e.,* Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) electronically through *http://www.grants.gov*.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications

Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will *not* notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and six copies of the application should be sent to: Program Management Division, ECA–IIP/EX/PM, *Ref.:* ECA/A/E/EUR–11–05, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word format on CD–ROM. As appropriate, the Bureau will provide these files electronically to Public Affairs Sections at the U.S. embassies for their review.

IV.3f.2—Submitting Electronic Applications

Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system.

Please Note: ECA bears no responsibility for applicant timeliness of submission or data errors resulting from transmission or conversion processes for proposals submitted via Grants.gov.

Please follow the instructions available in the "Get Started" portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov*.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support, Contact Center Phone: 800–518–4726, Business Hours: Monday–Friday, 7a.m.–9 p.m. Eastern Time. E-mail: *support@grants.gov.*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. *There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the Grants.gov system, and will be technically ineligible.*

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from Grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. *Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov*. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov Web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Optional—IV.3f.3 You may also state here any limitations on the number of applications that an applicant may submit and make it clear whether the limitation is on the submitting organization, individual program director or both.

IV.3g. Intergovernmental Review of Applications

Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea and program planning:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Institution's Record/Ability and Capacity:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau awards (grants or cooperative agreements) as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

6. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

7. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

8. *Cost-effectiveness and cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments."

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations.

Please reference the following Web sites for additional information:
http://www.whitehouse.gov/omb/grants
http://fa.statebuy.state.gov.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

(1.) A final program and financial report no more than 90 days after the expiration of the award;

(2.) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's USAspending.gov Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

(3) A SF–PPR, "Performance Progress Report" Cover Sheet with all program reports.

(4) Quarterly program and financial reports which should include summaries of program activity and lessons learned.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program

Officer listed in the final assistance award document.

VI.4. Optional Program Data Requirements

Award recipients will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the agreement or who benefit from the award funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Program Officer Karene Grad, U.S. Department of State, Office of Academic Exchange Programs, ECA/A/E/EUR, SA–5, Fourth Floor, 2200 C Street, NW., Washington, DC 20037, tel. 202–632–3237, *GradKE@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/E/EUR–11–05.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: *October 6, 2010.*

Ann Stock

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–25881 Filed 10–13–10; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 7208]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Sports Youth Visitor Program

Announcement Type: New Cooperative Agreement

Funding Opportunity Number: ECA/PE/C/SU–11–02

Catalog of Federal Domestic Assistance Number: 19.415

Key Dates:

Application Deadline: November 17, 2010

Executive Summary: The U.S. Department of State's Bureau of Educational and Cultural Affairs (ECA) seeks an organization to assist the Office of Citizen Exchanges in the implementation of several short-term, high-visibility sports exchanges taking place during calendar year 2011 and 2012. Approximately 18 programs from countries around the world will participate in exchange initiatives/projects in the United States designed to promote interaction between the foreign participants and their American peers.

I. Funding Opportunity Description

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Purpose: The three overarching goals for the exchange program are to help foreign participants and their American counterparts to: (1) Develop a broad worldview that incorporates diverse perspectives; (2) apply their skills toward productive and positive outlets in their local communities, and (3) build upon their professional skills and knowledge while developing a deeper understanding of U.S. society and culture. Through these projects, the Sports Visitor Program provides opportunities for foreign visitors to participate in intensive sport exchanges in the United States. The award recipient must provide overall programmatic, logistical, and administrative support for each of the 18 programs.

The project will entail working with ECA in planning and scheduling all events, including:

- Oversight of arrivals and departures;
- Preparing briefing materials;
- Locating and reserving athletic or cultural facilities; scheduling meeting rooms;
- Aiding in the recruitment of appropriate speakers and/or other sports figures;
- Designing and planning substantive and well-organized activities;
- Coordinating escorts and interpreters;
- Providing adult supervision for minors;
- Arranging possible air travel (domestic and, in some cases, international) and local transportation.

The program will enable participants to:

- Foster understanding and build relationships with others from different ethnic, religious, and national groups;
- Promote mutual understanding between the people of the partner countries and the United States;
- Learn more about U.S. society and culture, thereby countering negative stereotypes;
- Become part of a network of leaders who will share their knowledge and skills with their peers and the broader community.

Applicant organizations should identify their own specific objectives and measurable outcomes based on these program goals and the specifications provided in this solicitation.

Most programs will start and end in Washington, DC. Other activities will take place at other sites in the United States. The exchange format will be intensive and interactive, weaving together both formal and informal sessions to achieve the stated goals and objectives. Applicants must present a program plan that allows the participants to thoroughly explore the themes in a creative, memorable, and practical way. Activities should be

designed to be replicable and provide practical knowledge and skills that the participants can apply at home. Staff from the selected organization will be expected to be available and/or attend all aspects of the visitor programs, when appropriate and in coordination with ECA.

The proposal must demonstrate how these activities/objectives will be met. The proposal narrative should also provide detailed information on major program activities, and applicants should explain and justify their programmatic choices. Programs must comply with J–1 visa regulations. Please refer to the complete Solicitation Package — this RFGP, the Project Objectives, Goals, and Implementation (POGI), and the Proposal Submission Instructions (PSI) — for further information.

Sports Visitor Program

The Sports Visitor Program will consist of approximately 18 programs with 12–25 participants per program. For planning purposes, we anticipate a total number of approximately 300 participants per the 18 programs; however, final participant numbers will be determined by the Program Officer assigned to the program. Program participants will be selected from all world regions and will focus on a range of sports from basketball to volleyball. The Sports Visitors will be either athletes between the ages of 14 and 17, or adult coaches who will benefit both from personal interaction with U.S. professional athletes and coaches, and from traveling to the United States to take part in an introduction to U.S. training approaches, sports management techniques, or community-based sports programs. The majority of the Sports Visitors will be non-English language speakers with little prior experience in the United States. The final mix of countries and sports will be determined after discussions between ECA, Regional Bureaus, and the U.S. Embassies overseas, as well as input from the relevant U.S. Sports Federations and their foreign counterparts.

II. Award Information:

Type of Award: Cooperative Agreement

Fiscal Year Funds: 2011

Approximate Total Funding: $1,000,000

Approximate Number of Awards: One

Approximate Average Award: $1,000,000

Anticipated Award Date: February 1, 2011, pending the availability of funds

Anticipated Project Completion Date: February 29, 2012

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this cooperative agreement for two additional fiscal years, before openly competing it again.

The responsibilities of ECA regarding this cooperative agreement are as follows:

(1) Participation in the design and direction of program activities;

(2) Approval and input on program timelines and agendas;

(3) Guidance in execution of all program components;

(4) Review and approval of all program publicity and recruitment materials;

(5) Approval of decisions related to special circumstances or problems throughout duration of program;

(6) Management of all SEVIS-related issues;

(7) Assistance with participant emergencies;

(8) Identification of exchange participants with identified criteria for formal selection process;

(9) Liaison with relevant U.S. Embassies and country desk officers at the U.S. Department of State.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3. Other Eligibility Requirements

(a.) Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates making one award, in an amount up to $1,000,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years experience in conducting international exchanges are ineligible to apply under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

(b.) Award recipients must have a Washington, DC. presence. Applicants who do not currently have a Washington, DC presence must include a detailed plan in their proposal for establishing such a presence by January 1, 2011. The costs related to establishing such a presence must be borne by the award recipient. No such costs may be included in the budget submission in this proposal. The award recipient must have e-mail capability, access to Internet resources, and the ability to exchange data electronically with all partners involved in the Sports Visitor Program.

(c.) Proposals must demonstrate that an applicant has an established resource base of programming contacts and the ability to keep this resource base continuously updated. This resource base should include speakers, thematic specialists, or practitioners in a wide range of professional fields in both the private and public sectors.

(d.) Technical Eligibility: In addition to the requirements outlined in the Proposal Submission Instructions (PSI) technical format and instructions document, all proposals must comply with the following or they will result in your proposal being declared technically ineligible and given no further consideration in the review process.

The Office does not support proposals limited to conferences or seminars (i.e., one- to fourteen-day programs with plenary sessions, main speakers, panels, and a passive audience). It will support conferences only when they are a small part of a larger project in duration that is receiving Bureau funding from this competition.

No funding is available exclusively to send U.S. citizens to conferences or conference-type seminars overseas; nor is funding available for bringing foreign nationals to conferences or to routine

professional association meetings in the United States.

The Office of Citizen Exchanges does not support academic research or faculty or student fellowships.

IV. Application and Submission Information

Note: Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information to Request an Application Package

Please contact the Office of Citizen Exchanges, ECA/PE/C/SU, SA–5, 3rd Floor, SportsUnited, Department of State, Washington, DC 20037, 202–632–6436 phone; 202–632–9355 fax; or email: *DavisKX2@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number: ECA/PE/C/SU–11–02 when making your request.

Alternatively, an electronic application package may be obtained from grants.gov. Please see section IV.3.f for further information.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms, and standard guidelines for proposal preparation. It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Kelli R. Davis and refer to the Funding Opportunity Number: ECA/PE/C/SU–11–02 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm,* or from the Grants.gov Web site at *http://www.grants.gov.*

Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The application should be submitted per the instructions under IV.3f. "Application Deadline and Methods of Submission" section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application.

Please note: Effective January 7, 2009, all applicants for ECA federal assistance awards must include in their application the names of directors and/or senior executives (current officers, trustees, and key employees, regardless of amount of compensation). In fulfilling this requirement, applicants must submit information in one of the following ways:

(1) Those who file Internal Revenue Service Form 990, "Return of Organization Exempt From Income Tax," must include a copy of relevant portions of this form.

(2) Those who do not file IRS Form 990 must submit information above in the format of their choice.

In addition to final program reporting requirements, award recipients will also be required to submit a one-page document, derived from their program reports, listing and describing their grant activities. For award recipients, the names of directors and/or senior executives (current officers, trustees, and key employees), as well as the one-page description of grant activities, will be transmitted by the State Department to OMB, along with other information required by the Federal Funding Accountability and Transparency Act (FFATA), and will be made available to the public by the Office of Management and Budget on its USASpending.gov Web site as part of ECA's FFATA reporting requirements.

If your organization is a private nonprofit that has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Adherence to all regulations governing The J Visa. The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving awards (either a grant or cooperative agreement) under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of recipient organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving an award under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et. seq.*

The Bureau of Educational and Cultural Affairs places critically important emphases on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by recipient organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should explicitly state in writing that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.,* including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of

Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Designation, Private Sector Programs Division, ECA/EC/D/PS, SA–5, 5th Floor, 2200 C Street, NW., Washington, DC 20037.

IV.3d.2. Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the recipient organization will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are "smart" (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program outputs and outcomes. Outputs are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. Outcomes, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. Participant satisfaction with the program and exchange experience.

2. Participant learning, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. Participant behavior, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. Institutional changes, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (i.e., surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Recipient organizations will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Department of State Acknowledgement

All recipients of ECA grants or cooperative agreements should be prepared to state in any announcement or publicity where it is not inappropriate that activities are assisted financially by the Bureau of Educational and Cultural Affairs of the U.S. Department of State under the authority of the Fulbright-Hays Act of 1961, as amended. In any contact with the media (print, television, web, etc.) applicants must acknowledge the SportsUnited Division of the Bureau of Educational and Cultural Affairs of the U.S. Department of State funding for the program.

IV.3d.4. For information on the Bureau's policies regarding alumni outreach and engagement, as well as guidance on the proper acknowledgement of ECA sponsorship of this program, please refer to the enclosed PSI.

IV.3e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit SF–424A—"Budget Information—Non-Construction Programs" along with a comprehensive budget for the entire program. The award request may not exceed $1,000,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3e.2. Allowable costs for the program include the following:

1. Educational materials;

2. Participant travel (domestic, local, and in some cases, international, transportation);

3. Orientations;

4. Cultural and social activities;

5. Meeting costs;
6. Food and lodging,
7. Interpreters and translation, when necessary;
8. Follow-on activities;
9. Evaluation;
10. Stipends or allowances;
11. Other justifiable expenses directly related to supporting program activities.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Application Deadline and Methods of Submission:

Application Deadline Date: November 17, 2010

Reference Number: ECA/PE/C/SU–11–02

Methods of Submission:

Applications may be submitted in one of two ways:

(1.) In hard-copy, via a nationally recognized overnight delivery service (i.e., DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.), or

(2.) Electronically through *http://www.grants.gov.*

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3f.1 Submitting Printed Applications. Applications must be shipped no later than the above deadline. Delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. ECA will not notify you upon receipt of application. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. Delivery of proposal packages may not be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to "ECA/EX/PM".

The original and eight (8) copies of the application should be sent to: U.S. Department of State, Program Management Division, ECA–IIP/EX/PM, Ref.: ECA/PE/C/SU–11–02, SA–5, Floor 4, Department of State, 2200 C Street, NW., Washington, DC 20037.

Applicants submitting hard-copy applications must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) or Microsoft Word/Excel format on a PC-formatted disk.

IV.3f.2—Submitting Electronic Applications. Applicants have the option of submitting proposals electronically through Grants.gov (*http://www.grants.gov*). Complete solicitation packages are available at Grants.gov in the "Find" portion of the system. Please follow the instructions available in the 'Get Started' portion of the site (*http://www.grants.gov/GetStarted*).

Several of the steps in the Grants.gov registration process could take several weeks. Therefore, applicants should check with appropriate staff within their organizations immediately after reviewing this RFGP to confirm or determine their registration status with Grants.gov.

Once registered, the amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your internet connection. In addition, validation of an electronic submission via Grants.gov can take up to two business days.

Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov.

The Grants.gov Web site includes extensive information on all phases/aspects of the Grants.gov process, including an extensive section on frequently asked questions, located under the "For Applicants" section of the Web site. ECA strongly recommends that all potential applicants review thoroughly the Grants.gov Web site, well in advance of submitting a proposal through the Grants.gov system. ECA bears no responsibility for data errors resulting from transmission or conversion processes.

Direct all questions regarding Grants.gov registration and submission to: Grants.gov Customer Support Contact Center Phone: 800–518–4726, Business Hours: Monday—Friday, 7 a.m.–9 p.m. Eastern Time, Email: *support@grants.gov*

Applicants have until midnight (12 a.m.), Washington, DC time of the closing date to ensure that their entire application has been uploaded to the Grants.gov site. There are no exceptions to the above deadline. Applications uploaded to the site after midnight of the application deadline date will be automatically rejected by the grants.gov system, and will be technically ineligible.

Please refer to the Grants.gov Web site, for definitions of various "application statuses" and the difference between a submission receipt and a submission validation. Applicants will receive a validation e-mail from grants.gov upon the successful submission of an application. Again, validation of an electronic submission via Grants.gov can take up to two business days. Therefore, we strongly recommend that you not wait until the application deadline to begin the submission process through Grants.gov. ECA will *not* notify you upon receipt of electronic applications.

It is the responsibility of all applicants submitting proposals via the Grants.gov web portal to ensure that proposals have been received by Grants.gov in their entirety, and ECA bears no responsibility for data errors resulting from transmission or conversion processes.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Program Planning: Detailed agenda and relevant work plan should

demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above. Program schedules should reflect innovative and relevant itineraries, and creative and dynamic meetings and site visits.

2. Ability to Achieve Program Objectives: Objectives should be reasonable, feasible, and flexible. Your proposal should clearly demonstrate how your organization will meet the program's objectives and plan.

3. Multiplier Effect/Impact: The proposed program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities). Applicants should refer to the Bureau's Diversity, Freedom and Democracy Guidelines in the PSI and the Diversity, Freedom and Democracy Guidelines section, Item IV.3d.2, above for additional guidance.

5. Project Evaluation: Your proposal should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique, plus a description of a methodology to use to link outcomes to original project objectives.

6. Institution's Record/Ability/Institutional Capacity: Your proposal should demonstrate an institutional record of successful international exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by the Bureau's Grants Office. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project goals.

7. Cost-effectiveness: The applicant should demonstrate efficient use of Bureau funds. Overhead and administrative costs in the proposal budget, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Proposals whose administrative costs are less than twenty-five (25) per cent of the total funds requested from the Bureau will be deemed more competitive under this criterion. All other items should be necessary and appropriate.

VI. Award Administration Information

VI.1a. Award Notices. Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. The successful applicant will receive a Federal Assistance Award (FAA) from the Bureau's Grants Office. The FAA and the original proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The FAA will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.1b. The following additional requirements apply to this project: A critical component of current U.S. government Iran policy is the support for indigenous Iranian voices. The State Department has made the awarding of grants for this purpose a key component of its Iran policy. As a condition of licensing these activities, the Office of Foreign Assets Control (OFAC) has requested the Department of State to follow certain procedures to effectuate the goals of Sections 481(b), 531(a), 571, 582, and 635(b) of the Foreign Assistance Act of 1961 (as amended); 18 U.S.C. 2339A and 2339B; Executive Order 13224; and Homeland Security Presidential Directive 6. These licensing conditions mandate that the Department conduct a vetting of potential Iran grantees and sub-grantees for counter-terrorism purposes. To conduct this vetting the Department will collect information from grantees and sub-grantees regarding the identity and background of their key employees and Boards of Directors.

Note: To assure that planning for the inclusion of Iran complies with requirements, please contact Kelli R. Davis, telephone number 202–632–6436, e-mail *DavisKX2@state.gov* for additional information.

All awards made under this competition must be executed according to all relevant U.S. laws and policies regarding assistance to the Palestinian Authority, and to the West Bank and Gaza. Organizations must consult with relevant Public Affairs Offices before entering into any formal arrangements or agreements with Palestinian organizations or institutions.

Note: To assure that planning for the inclusion of the Palestinian Authority complies with requirements, please contact: Kelli R. Davis, telephone number 202–632–6436, e-mail *DavisKX2@state.gov* for additional information.

VI.2 Administrative and National Policy Requirements:

Terms and Conditions for the Administration of ECA agreements include the following: Office of Management and Budget Circular A–122, "Cost Principles for Nonprofit Organizations."

Office of Management and Budget Circular A–21, "Cost Principles for Educational Institutions."

OMB Circular A–87, "Cost Principles for State, Local and Indian Governments".

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following Web sites for additional information: *http://www.whitehouse.gov/omb/grants; http://fa.statebuy.state.gov.*

VI.3. Reporting Requirements: You must provide ECA with a hard copy original plus two copies of the following reports:

(1.) A final program and financial report no more than 90 days after the expiration of the award;

(2.) A concise, one-page final program report summarizing program outcomes no more than 90 days after the expiration of the award. This one-page report will be transmitted to OMB, and be made available to the public via OMB's *USAspending.gov* Web site—as part of ECA's Federal Funding Accountability and Transparency Act (FFATA) reporting requirements. A SF–PPR, "Performance Progress Report" Cover

(3.) Quarterly program and financial reports are required that provide concise information on all programs completed that quarter as well as a description of planning undertaken for programs taking place in the following quarter. Financial reports should describe funding allocated to each program

completed as well as an estimated budget for programs to be undertaken in the next quarter. A SF–PPR, "Performance Progress Report" Cover Sheet is required with all program reports.

Award recipients will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

VII. Agency Contacts

For questions about this announcement, contact: Kelli R. Davis, Office of Citizen Exchanges, Office of SportsUnited ECA/PE/C/SU, Room 3–G09, ECA/PE/C/SU–11–02, U.S. Department of State, SA–5, 2200 C Street, NW., Washington, DC 20037, telephone number: 202–632–6436, e-mail *DavisKX2@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number: ECA/PE/C/SU–11–02.

Please read the complete announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: October 6, 2010.

Ann Stock,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 2010–25883 Filed 10–13–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7210]

State-56, Network User Account Records

SUMMARY: Notice is hereby given that the Department of State proposes to create a system of records, Network User Account Records, State-56, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on August 16, 2010.

It is proposed that the new system will be named "Network User Account Records." It is also proposed that the new system description will be utilized to administer network user accounts; to help document and/or control access to computer systems, platforms, services, applications, and databases within a Department network; to monitor security of computer systems; to investigate and make referrals for disciplinary or other actions if unauthorized access or inappropriate usage is suspected or detected; and to identify the need for training programs.

Any persons interested in commenting on the new system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director, Office of Information Programs and Services, A/GIS/IPS, Department of State, SA–2, 515 22nd Street, Washington, DC 20522–8001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The new system description, "Network User Account Records, State-56," will read as set forth below.

Dated: August 16, 2010.

Steven J. Rodriguez,

Deputy Assistant Secretary of Operations, Bureau of Administration, U.S. Department of State.

STATE–56

SYSTEM NAME:

Network User Account Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained by the Department of State in secure facilities wherever a domain controller is automatically compiling a visitors' log of individuals who authenticate to a particular server.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of State employees and other organizational users who have access to Department of State computer networks.

CATEGORIES OF RECORDS IN THE SYSTEM:

This Privacy Act system consists of the network user account records that Department information systems, applications, and services compile and maintain about users of a network. These records include user data such as the user's name, system-assigned username; e-mail address; employee or other user identification number; organization code; job title; business affiliation; work contact information; systems, applications, or services to which the individual has access; systems, applications, or services used; dates, times, and durations of use; user profile; and IP address of access. The records also include system usage files and directories when they contain information about specific users.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 44 U.S.C. 3544.

PURPOSE:

To administer network user accounts; to help document and/or control access to computer systems, platforms, services, applications, and databases within a Department network; to monitor security of computer systems; to investigate and make referrals for disciplinary or other actions if unauthorized access or inappropriate usage is suspected or detected; and to identify the need for training programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses applicable to this system of records are published at 73 FR 40650–40651 (July 15, 2008).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic and paper records.

RETRIEVABILITY:

Records are indexed by the user's name, system-assigned username; e-mail address; or other searchable data fields or codes.

SAFEGUARDS:

All individuals with access to the records covered by this system of records receive cyber security awareness training which covers the procedures for handling classified and Sensitive-but-Unclassified information, including personally identifiable information. Annual refresher training is mandatory. Individuals with access undergo a background security investigation. All paper records are maintained in secured filing cabinets or in restricted areas, access to which is limited to authorized personnel only. Access to electronic records is password-protected and under the supervision of the information owner. Access privileges reflect separation of duties and least privilege, and are only extended to those Department personnel who have a need for the records in the performance of their duties. Individuals who are authorized to examine detailed information about the network and system usage of specific users are assigned privileged system accounts for that purpose. When it is determined that an individual no longer requires access, his or her account is disabled.

RETENTION AND DISPOSAL:

See National Archives and Records Administration General Records Schedule 20.1 (Files/Records Relating to the Creation, Use, and Maintenance of Computer Systems, Applications, or Electronic Records) and 24.6 (User Identification, Profiles, Authorizations, and Password Files). Records are deleted when no longer needed for administrative, legal, audit, or other operational purposes.

SYSTEM MANAGER AND ADDRESS:

Chief Information Officer, Department of State, 2201 C Street, NW., Washington, DC 20520.

NOTIFICATION PROCEDURES:

Individuals who have reason to believe that this system of records may contain information pertaining to them may write the Director, Office of Information Programs and Services, Department of State, SA–2, 515 22nd Street, NW., Washington, DC 20522–8001. At a minimum, the individual should include the name of this system of records; their name, current mailing address, zip code, and signature; and a brief description of the circumstances that caused the individual to believe that the system of records contains records pertaining to them, including the specific geographic locations, overseas missions, or individual offices in which the individual believes he or she may have accessed or is believed to have accessed the Department's computer systems.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to them should write to the Director, Office of Information Programs and Services, Department of State, SA–2, 515 22nd Street, NW., Washington, DC 20522–8001.

RECORD SOURCE CATEGORIES:

Individuals about whom the record is maintained; information systems, applications, and services within a Department network that record usage by individuals assigned a user account on that network.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2010–25884 Filed 10–13–10; 8:45 am]

BILLING CODE 4710–00–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Actions Taken at September 16, 2010, Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of Commission Actions.

SUMMARY: At its regular business meeting on September 16, 2010, in Corning, New York, the Commission held a public hearing as part of its regular business meeting. At the public hearing, the Commission: (1) Approved settlements involving three water resources projects; (2) approved and tabled certain water resources projects, including approval of one project involving diversions into the basin; and (3) rescinded approval for two water resources projects.

DATES: September 16, 2010.

ADDRESSES: Susquehanna River Basin Commission, 1721 N. Front Street, Harrisburg, PA 17102–2391.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net;* or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the following items were also presented or acted on at the business meeting: (1) An update on the SRBC Remote Water Quality Monitoring Network; (2) a report on the present hydrologic conditions of the basin; (3) approval of a final rulemaking amending 18 CFR parts 806 and 808; (4) ratification/approval of grants/contracts; and (5) amendment of Resolution No. 2010–03 adopting a FY–2012 budget commencing July 1, 2011. The Commission heard counsel's report on legal matters affecting the Commission. The Commission also convened a public hearing and took the following actions:

Public Hearing—Compliance Matters

The Commission approved a settlement in lieu of civil penalties for the following projects:

1. Talisman Energy USA Inc. Pad ID: Castle 01 047 (ABR–20100128), Armenia Township; Harvest Holdings 01 036 (ABR–20100225), Canton Township; and Putnam 01 076 (ABR–20100233), Armenia Township; Bradford County, Pa.—$8,280

2. Cabot Oil & Gas Corporation. Withdrawal ID: Susquehanna River-3 (Docket No. 20080905), Great Bend Borough, Susquehanna County, Pa.—$5,000

3. Seneca Resources Corporation. Pad ID: M. Pino H (ABR–20090933), DCNR 100 1V (ABR–20090436), Wilcox F (ABR–20090505), T. Wivell (ABR–20090814), Wivell I (ABR–20100607), DCNR 595 E (ABR–20100307), DCNR 595 D (ABR–20090827); Withdrawal ID: Arnot 5—Signor (Docket No. 20090908).—$35,000

Public Hearing—Projects Approved

1. Project Sponsor and Facility: Anadarko E&P Company LP (Beech Creek), Snow Shoe Township, Centre County, Pa. Surface water withdrawal of up to 0.249 mgd.

2. Project Sponsor and Facility: Anadarko E&P Company LP (Pine Creek—2), McHenry Township, Lycoming County, Pa. Surface water withdrawal of up to 0.499 mgd.

3. Project Sponsor: Aqua Pennsylvania, Inc. Project Facility: Monroe Manor Water System, Monroe Township, Snyder County, Pa. Groundwater withdrawal of up to 0.180 mgd from Well 4.

4. Project Sponsor and Facility: Buck Ridge Stone, LLC (Salt Lick Creek), New Milford Township, Susquehanna County, Pa. Surface water withdrawal of up to 0.083 mgd.

5. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River), Mehoopany Township, Wyoming County, Pa. Modification to project features of the withdrawal approval (Docket No. 20080923).

6. Project Sponsor and Facility: Citrus Energy (Susquehanna River), Washington Township, Wyoming County, Pa. Surface water withdrawal of up to 1.994 mgd.

7. Project Sponsor and Facility: Geary Enterprises (Buttermilk Creek), Falls Township, Wyoming County, Pa. Surface water withdrawal of up to 0.099 mgd.

8. Project Sponsor: New Morgan Landfill Company, Inc. Project Facility: Conestoga Landfill, New Morgan Borough, Berks County, Pa. Groundwater withdrawal of up to 0.003 mgd from the Shop Well and surface water withdrawal of up to 0.249 mgd from the Quarry Pond.

9. Project Sponsor and Facility: Novus Operating, LLC (Cowanesque River), Westfield Township, Tioga County, Pa. Surface water withdrawal of up to 0.750 mgd.

10. Project Sponsor and Facility: Smith Transport Warehouse (Bald Eagle Creek), Snyder Township, Blair County, Pa. Surface water withdrawal of up to 0.160 mgd.

11. Project Sponsor and Facility: Sugar Hollow Trout Park and Hatchery, Eaton Township, Wyoming County, Pa. Groundwater withdrawal of up to 0.864 mgd combined total from Wells 1, 2, and 3 (Hatchery Well Field).

12. Project Sponsor and Facility: Talisman Energy USA Inc. (Seeley Creek), Wells Township, Bradford County, Pa. Surface water withdrawal of up to 0.750 mgd.

13. Project Sponsor and Facility: Talisman Energy USA Inc. (Wyalusing Creek), Stevens Township, Bradford County, Pa. Surface water withdrawal of up to 2.000 mgd.

14. Project Sponsor and Facility: Williams Production Appalachia, LLC (Snake Creek), Liberty Township, Susquehanna County, Pa. Modification to project features of the withdrawal approval (Docket No. 20090302).

Public Hearing—Projects Tabled

1. Project Sponsor and Facility: Anadarko E&P Company LP (Wolf Run), Snow Shoe Township, Centre County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

2. Project Sponsor and Facility: Chief Oil & Gas LLC (Martins Creek), Hop Bottom Borough, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.360 mgd.

3. Project Sponsor and Facility: Mansfield Borough Municipal Authority, Richmond Township, Tioga County, Pa. Application for groundwater withdrawal of up to 0.079 mgd from Well 3.

4. Project Sponsor and Facility: Novus Operating, LLC (Tioga River), Covington Township, Tioga County, Pa. Application for surface water withdrawal of up to 1.750 mgd.

5. Project Sponsor and Facility: Walker Township Water Association, Walker Township, Centre County, Pa. Modification to increase the total groundwater system withdrawal limit (30-day average) from 0.523 mgd to 0.962 mgd (Docket No. 20070905).

Public Hearing—Diversion Project Approved

1. Project Sponsor: Gettysburg Municipal Authority. Project Facility: Hunterstown Wastewater Treatment Plant, Straban Township, Adams County, Pa. Application for an existing into-basin diversion of up to 0.123 mgd from the Potomac River Basin.

Public Hearing—Rescission of Project Approvals

1. Project Sponsor: McNeil PPC. Project Facility: Johnson & Johnson (Docket No. 20050906), Lititz Borough, Lancaster County, Pa.

2. Project Sponsor: Northampton Fuel Supply Company, Inc. Project Facility: Loomis Bank Operation (Docket No. 20040904), Hanover Township, Luzerne County, Pa.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: September 30, 2010.

Thomas W. Beauduy,

Deputy Executive Director.

[FR Doc. 2010–25792 Filed 10–13–10; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Tuesday, October 26, and Wednesday October 27, 2010 from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Gaylord National Resort, and Convention Center, 201 Waterfront St., National Harbor, MD 20745.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Jehlen, ATPAC Executive Director, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 493–4527.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App.2), notice is hereby given of a meeting of the ATPAC to be held Tuesday, October 26, and Wednesday, October 27, 2010, from 8:30 a.m. to 5 p.m.

The agenda for this meeting will cover a continuation of the ATPAC's review of present air traffic control procedures and practices for standardization, revision, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes;
2. Submission and Discussion of Areas of Concern;
3. Discussion of Potential Safety Items;
4. Report from Executive Director;
5. Items of Interest; and
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify Mr. Richard Jehlen no later than October 19, 2010. Any member of the public may present a written statement to the ATPAC at any time at the address given above.

Issued in Washington, DC, on October 6, 2010.

Richard Jehlen,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 2010–25838 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0187]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 21 individuals from

the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective October 14, 2010. The exemptions expire on October 15, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Background

On August 9, 2010, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (75 FR 47883). That notice listed 21 applicants' case histories. The 21 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 21 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 21 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, complete loss of vision, hamartoma, loss of vision, macular scarring, prosthesis, pseudoangioma, retinal detachment and retinal scarring. In most cases, their eye conditions were recently developed. Eight of the applicants were either born with their vision impairments or have had them since childhood. The 13 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 30 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 21 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 35 years. In the past 3 years, 4 of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the August 9, 2010 notice (75 FR 47883).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the

studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (*See* 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (*See* Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 21 applicants, two of the applicants had traffic violations for speeding and two of the applicants were involved in crashes. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 21 applicants listed in the notice of August 9, 2010 (75 FR 47883).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 21 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received two comments in this proceeding. These comments were considered and discussed below.

The Colorado Department of Motor Vehicles stated that it was in favor of granting a Federal vision exemption to Richard W. Gleiforst.

An anonymous individual stated that he feels the Agency is negligent and he feels that it is unsafe for individuals with vision deficiencies to be operating vehicles on public roads.

In response to this comment, FMCSA's exemption process supports drivers with vision deficiencies who seek to operate in interstate commerce. In addition, FMSCA relies on the expert medical opinion of the optometrist or ophthalmologist, who are required to attest that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and the medical examiner, who is required to attest that the individual is otherwise physically qualified under 49 CFR 391.41. Until the Agency issues a Final Rule, however, drivers with vision deficiencies must continue to apply for exemptions from FMCSA, and request renewals of such exemptions. FMCSA will grant exemptions only to those applicants who meet the specific conditions and comply with all the requirements of the exemption.

Conclusion

Based upon its evaluation of the 21 exemption applications, FMCSA exempts, Randall J. Benson, Larry D. Brown, Julian W. Collins, James G. Etheridge, Jerry A. Evans, Guys R. Flowers, Jr., Jeremy L. Fricke, Richard W. Gleiforst, Edward P. Hynes, II, Keith R. Jordan, Theodore D. Kirby, Joseph A. Leigh, Jr., John L. Lethcoe, Ronald J. McTague, Benito Saldana, Julius Simmons, Jr., Kenneth J. Weaver, Carl V. Wheeler, Stephen B. Whitt, Darrell F. Woolsey and Jason M. Zaragoza from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than

was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on September 24, 2010.

Larry W. Minor,

Associate Administrator, Office of Policy and Program Development.

[FR Doc. 2010–25839 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2010–0086, 2010–0087, 2010–0088]

Vessel Re-Designations

AGENCY: U.S. Department of Transportation, Maritime Administration.

ACTION: Notice.

SUMMARY: On September 4, 2009, the United States Department of Agriculture (USDA), the United States Department of Transportation's Maritime Administration (MARAD), and the United States Agency for International Development (USAID) entered into a Memorandum of Understanding (MOU) regarding the proper implementation of the Cargo Preference Act (CPA). The MOU was published in the **Federal Register** in 74 FR 47308 (Sept. 15, 2009). The MOU is also available at *http://www.marad.dot.gov/documents/MAR730.AG-2009-02.pdf.*

That MOU establishes procedures and standards by which owners and operators of oceangoing cargo ships may seek to designate each of their vessels as either a dry bulk carrier or a dry cargo liner, according to specified service-based criteria. This Notice both announces that MARAD has received an application to re-designate three vessels and invites comments there on from interested parties. MARAD will thereafter consider all the information submitted regarding the requested re-designation and other evidence in the record in reaching its decision on the appropriate vessel classification.

DATES: Comments are due October 25, 2010.

ADDRESSES: All comments should prominently refer to the docket assigned to the vessel to which they pertain. Interested persons are strongly encouraged to submit their comments electronically via the Internet at *http://www.regulations.gov.* Enter the docket number provided below that pertains to the relevant vessel and follow instructions for submitting comments. Comments may also be submitted via Fax or by hand or express delivery. Fax: (202) 493–2251. Hand or express delivery: Docket Clerk, 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: Michael Yarrington, Maritime Administration, 1200 New Jersey Ave., SE., Washington, DC 20590; *phone:* (202) 366–1915; *fax:* (202) 366–5522; or *e-mail: michael.yarrington@dot.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during business hours. The FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal business hours.

Background

The CPA requires that federal agencies take "necessary and practicable" steps to ensure that privately-owned U.S.-flag vessels transport at least 50 percent of the gross tonnage of cargo sponsored under Federal programs "(computed separately for dry bulk carriers, dry cargo liners, and tankers) to the extent such vessels are available at fair and reasonable rates for commercial vessels of the United States, in a manner that will ensure a fair and reasonable participation of commercial vessels of the United States in those cargoes by geographic areas." 46 U.S.C. 55305(b). An additional 25 percent of gross tonnage of certain food assistance programs is to be transported in accordance with the requirements of 46 U.S.C. 55314.

The MOU adopts standards and procedures to be used to classify the vessels transporting preference cargo. Owners and operators of the vessels listed below have submitted applications to re-designate their ships as cargo liners. Each vessel has been assigned a separate docket containing the materials submitted. Interested persons are invited to submit comments regarding these vessels to the appropriate docket no later than 5 p.m. EDT on [Insert ten days after date of publication]. Commentators are advised to address their comments to the service-based criteria listed in the MOU.

APPLICATIONS TO RE-DESIGNATE

Docket	Owner/operator	Vessel
MARAD–2010–0086	Liberty Maritime Corp	M/VLIBERTY EAGLE.
MARAD–2010–0087	Liberty Maritime Corp	M/VLIBERTY GLORY.
MARAD–2010–0088	Liberty Maritime Corp	M/VLIBERTY GRACE.

MARAD will issue such determinations no later than 15 calendar days from the close of the comment period. Vessel owners and operators who object to MARAD's designation may appeal to the MARAD Administrator within 10 calendar days. MARAD will issue its final determination in such cases within 30 calendar days after consultation with USAID, USDA, and the U.S. Department of State.

By Order of the Maritime Administrator.

Dated: October 7, 2010.

Christine Gurland,

Secretary, Maritime Administration.

[FR Doc. 2010–25840 Filed 10–13–10; 8:45 am]

BILLING CODE 4910–81–P

Federal Register

Thursday,
October 14, 2010

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2009–0559; FRL–9210–8]

RIN 2060–AP90

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes how EPA will address Clean Air Act requirements to establish new source performance standards for new units and emission guidelines for existing units for specific categories of solid waste incineration units. In previous actions, EPA has promulgated new source performance standards and emission guidelines for large municipal waste combustion units, small municipal waste combustion units, commercial and industrial solid waste incineration units, and other solid waste incineration units. These actions did not establish emission standards for sewage sludge incineration units. In this action, EPA is proposing new source performance standards and emission guidelines for sewage sludge incineration units.

DATES: *Comments.* Comments must be received on or before November 15, 2010, unless a public hearing is held. If a public hearing is held, then comments must be received on or before November 29, 2010. Under the Paperwork Reduction Act, since the Office of Management and Budget is required to make a decision concerning the information collection request between 30 and 60 days after October 14, 2010, a comment to the Office of Management and Budget is best assured of having its full effect if the Office of Management and Budget receives it by November 15, 2010.

Public Hearing. If anyone contacts EPA by October 25, 2010 requesting to speak at a public hearing, EPA will hold a public hearing on October 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0559, by one of the following methods:

http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: Send your comments via electronic mail to *a-and-r-Docket@epa.gov,* Attention Docket ID No. EPA–HQ–OAR–2009–0559.

Facsimile: Fax your comments to (202) 566–9744, Attention Docket ID No. EPA–HQ–OAR–2009–0559.

Mail: Send your comments to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2009–0559. Please include a total of two copies. We request that a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

Hand Delivery: Deliver your comments to: EPA Docket Center (EPA/DC), EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC, 20460, Attention Docket ID No. EPA–HQ–OAR–2009–0559. Such deliveries are accepted only during the normal hours of operation (8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays) and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0559. The EPA's policy is that all comments received will be included in the public docket 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 or other information whose disclosure is restricted by statute. Do not submit information that you consider to be Confidential Business Information 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.

Public Hearing: If a public hearing is held, it will be held at EPA's Campus located at 109 T.W. Alexander Drive in Research Triangle Park, NC, or an alternate site nearby. Contact Ms. Joan Rogers at (919) 541–4487 to request a hearing, to request to speak at a public hearing, to determine if a hearing will be held, or to determine the hearing location. If no one contacts EPA requesting to speak at a public hearing concerning this proposed rule by October 25, 2010, the hearing will be cancelled, and a notification of cancellation will be posted on the following Web site: *http://www.epa.gov/ttn/atw/eparules.html.*

Docket: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2009–0559. 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.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at 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 EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Hambrick, Natural Resource and Commerce Group, Sector Policies and Programs Division (E143–03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–0964; *fax number:* (919) 541–3470; *e-mail address: hambrick.amy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. Several acronyms and terms are used in this preamble. While this may not be an exhaustive list, to ease the reading of this preamble and for reference purposes, the following terms and acronyms are defined here:

7–PAH 7-polycyclic Aromatic Hydrocarbons
ANSI American National Standards Institute
AsvArsenic
ASME American Society of Mechanical Engineers
ASTM American Society of Testing and Materials

CAA Clean Air Act
CASS Continuous Automated Sampling System
CBI Confidential Business Information
Cd Cadmium
CDD/CDF Dioxins and Dibenzofurans
CDX Central Data Exchange
CEMS Continuous Emissions Monitoring Systems
COMS Continuous Opacity Monitoring System
CPMS Continuous Parametric Monitoring System
CFR Code of Federal Regulations
CISWI Commercial and Industrial Solid Waste Incineration
CO Carbon Monoxide
Cr Chromium
CWA Clean Water Act
EG Emission Guidelines
EJ Environmental Justice
ERT Electronic Reporting Tool
ESP Electrostatic Precipitators
FF Fabric Filter
FB Fluidized Bed
FGR Flue Gas Recirculation
HAP Hazardous Air Pollutants
HCl Hydrogen Chloride
Hg Mercury
HMIWI Hospital, Medical and Infectious Waste Incineration
ICR Information Collection Request
ISTDMS Integrated Sorbent Trap Dioxin Monitoring System
ISTMMS Integrated Sorbent Trap Mercury Monitoring System
LML Lowest Measured Level
MACT Maximum Achievable Control Technology
Mg/dscm Milligrams per Dry Standard Cubic Meter
MH Multiple Hearth
Mn Manganese
MWC Municipal Waste Combustion
NAAQS National Ambient Air Quality Standards
NAICS North American Industrial Classification System
Ng/dscm Nanograms per Dry Standard Cubic Meter
Ni Nickel
NO_X Nitrogen Oxides
NSPS New Source Performance Standards
NTTAA National Technology Transfer and Advancement Act of 1995
OAQPS Office of Air Quality Planning and Standards
O&M Operation and Maintenance
OMB Office of Management and Budget
OPEI Office of Policy, Economics, and Innovation
OSWI Other Solid Waste Incineration
OTM Other Test Method
OW Office of Water
Pb Lead
PCB Polychlorinated Biphenyls
PM Particulate Matter
POTW Publicly Owned Treatment Works
PPM Parts Per Million
PPMV Parts per Million by Volume
PPMVD Parts per Million of Dry Volume
PRA Paperwork Reduction Act
PS Performance Specifications
RCRA Resource Conservation and Recovery Act
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RTO Regenerative Thermal Oxidizer
SBA Small Business Administration
SCR Selective Catalytic Reduction
SNCR Selective Non-Catalytic Reduction
SO_2 Sulfur Dioxide
SSI Sewage Sludge Incineration
SSM Startup, Shutdown, and Malfunction
TEF Toxic Equivalency Factor
TEQ Toxic Equivalency
THC Total Hydrocarbons
TMB Total Mass Basis
TPD Tons per Day
TPY Tons per Year
TTN Technology Transfer Network
UMRA Unfunded Mandates Reform Act of 1995
UPL Upper Prediction Limit
VCS Voluntary Consensus Standards
WWW Worldwide Web

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. General Information
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F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does the proposed action apply to me?

Regulated Entities. Although there is not a specific NAICS code for SSI, these units may be operated by municipalities or other entities. The following NAICS codes could apply:

Category	NAICS code	Examples of potentially regulated entities
Solid waste combustors and incinerators	562213	Municipalities with SSI units.
Sewage treatment facilities	221320	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the proposed action. To determine whether your facility would be affected by the proposed action, you should examine the applicability criteria in proposed 40 CFR 60.4770 of subpart LLLL and proposed 40 CFR

60.5005 of subpart MMMM. If you have any questions regarding the applicability of the proposed action to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments?

1. Submitting CBI

Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or e-mail. Send or deliver information identified as CBI to only the following address: Ms. Amy Hambrick, c/o OAQPS Document Control Officer (Room C404–02), U.S. EPA, Research Triangle Park, NC 27711, Attention Docket ID No. EPA–HQ–OAR–2009–0559. 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 marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

Identify the rulemaking by docket number and other identifying information (*e.g.,* subject heading, **Federal Register** date and page number).

Follow directions. EPA may ask you to respond to specific questions or organize comments by referencing a 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 preceding section titled **DATES**.

3. Docket

The docket number for the proposed action regarding the SSI NSPS (40 CFR part 60, subpart LLLL) and EG (40 CFR part 60, subpart MMMM) is Docket ID No. EPA–HQ–OAR–2009–0559.

4. Worldwide Web

In addition to being available in the docket, an electronic copy of the proposed action is available on the WWW through the TTN Web site. Following signature, EPA posted a copy of the proposed action on the TTN Web site's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN Web site provides information and technology exchange in various areas of air pollution control.

II. Background

A. What information is included in this preamble and how is it organized?

In this preamble, EPA summarizes the important features of these proposed standards and guidelines that apply to SSI units. This preamble describes the environmental, energy, and economic impacts of these standards and guidelines; describes the basis for each of the decisions made regarding the proposed standards and guidelines; requests public comments on certain issues; and discusses administrative requirements relative to this action.

B. Where in the CFR will these standards and guidelines be codified?

The CFR is a codification of the general and permanent rules published in the **Federal Register** by the executive departments and agencies of the Federal government. The code is divided into 50 titles that represent broad areas subject to Federal regulation. These proposed rules for solid waste incineration units would be published in Title 40, Protection of the Environment. Part 60 of title 40 includes standards of performance for new stationary sources and EG and compliance times for existing sources. The table below lists the subparts in which the standards and guidelines will be codified.

Title of the regulation	Subpart in Title 40, part 60
Standards of Performance for New Stationary Sources: Sewage Sludge Incineration Units.	Subpart LLLL
Emission Guidelines and Compliance Times for Sewage Sludge Incineration Units.	Subpart MMMM

C. What is the statutory background?

Section 129 of the CAA, titled, "Solid Waste Combustion," requires EPA to develop and adopt NSPS and EG for solid waste incineration units pursuant to CAA sections 111 and 129. A SSI unit is an incinerator that combusts sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter.

Sections 111(b) and 129(a) of the CAA address emissions from new SSI units, and CAA sections 111(d) and 129 (b) address emissions from existing SSI units. The NSPS are directly enforceable Federal regulations, and under CAA section 129(f)(1), become effective 6 months after promulgation. Under CAA section 129(f)(2), the EG become effective and enforceable 3 years after EPA approves a State plan implementing the EG or 5 years after the date they are promulgated, whichever is sooner. Clean Air Act section 129(a)(1) identifies 5 categories of solid waste incineration units:

- Units that combust municipal waste at a capacity greater than 250 TPD.
- Units that combust municipal waste at a capacity equal to or less than 250 TPD.
- Units that combust hospital, medical, and infectious waste.
- Units that combust commercial or industrial waste.
- Units that combust waste and which are not specifically identified in section 129(a)(1)(A) through (D) are referred to in section 129(a)(1)(E) as "other categories" of solid waste incineration units.

Sewage sludge incinerators, by virtue of having not been specifically identified in section 129(a)(1)(A) through (D), have been interpreted to be part of the broader category of "other categories" of solid waste. EPA has issued emission standards for large and small MWC, HMIWI, CISWI, and OSWI units. However, as explained further in this section of the preamble, none of those emission standards apply to SSI units.

Section 129(g)(1) of the CAA defines "solid waste incineration unit" as "a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public." Section 129(g)(6) provides that "solid waste" shall have the meaning established by EPA pursuant to its authority under the RCRA.

EPA issued emission standards for OSWI units on December 16, 2005 (70 FR 74870). The OSWI standards did not include emission standards for SSI units. EPA received a petition for reconsideration of the OSWI standards on February 14, 2006, regarding the exclusion of certain categories, including SSI.[1] While EPA granted the petition for reconsideration on June 28, 2006, EPA's final review, which became effective January 22, 2007, concluded that no additional changes were necessary to the 2005 OSWI rule (71 FR 36726). That litigation is currently being held in abeyance. However, EPA currently intends to revise the emission standards for OSWI units in the future, and that rulemaking would address all OSWI units except SSI units.

In the OSWI rule issued on December 16, 2005, EPA stated that we were not issuing emission standards under CAA section 129 for SSI units (70 FR 74870). We explained that we would instead regulate SSI units under CAA section 112 because we interpreted CAA section 129(h)(2) as giving EPA the discretion to choose the section of the CAA (*i.e.,* section 112 or section 129) under which to regulate these sources. We reiterated that decision in the response to the petition for reconsideration on this issue. In addition, we stated in the final action, on January 22, 2007, that the 4 specific statutory exemptions from the definition of "solid waste incineration unit" in CAA section 129 (g)(1) were not exclusive, and that section 129(a)(1)(E) does not require EPA to establish emission standards for all other types of incineration units in addition to those identified in section 129(a)(1)(A) through (D) (72 FR 2620). However, since the January 2007 action responding to the petition for reconsideration, the U.S. Court of Appeals for the District of Columbia Circuit (the Court) [2], in June 2007, in a separate decision related to EPA's December 1, 2000, emission standards for CISWI units, held that any unit combusting any solid waste must be regulated under section 129 of the CAA, as explained below.

As part of EPA's December 1, 2000, CISWI rulemaking, EPA defined the term "commercial and industrial waste" to mean solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility. On August 17, 2001, EPA granted a request for reconsideration, pursuant to CAA section 307(d)(7)(B), submitted on behalf of the National Wildlife Federation and the Louisiana Environmental Action Network, related to the definition of "commercial and industrial solid waste incineration unit" and "commercial or industrial waste" in EPA's CISWI rulemaking. In granting the petition for reconsideration, EPA agreed to undertake further notice and comment proceedings related to these definitions. In addition, on January 30, 2001, the Sierra Club filed a petition for review in the Court challenging EPA's final CISWI rule. On September 6, 2001, the Court entered an order granting EPA's motion for a voluntary remand of the CISWI rule, without vacatur. On remand, EPA solicited comments on the CISWI Rule's definitions of "solid waste," "commercial and industrial waste" and "CISWI unit." On September 22, 2005, EPA issued the CISWI Definitions Rule, which contained definitions that were substantively the same as those issued before reconsideration. In particular, the 2005 CISWI Definitions Rule defined "commercial or industrial waste" to include only waste that is combusted at a facility that cannot or does not use a process that recovers thermal energy from the combustion for a useful purpose.

EPA received a petition for judicial review of the CISWI Definitions Rule from several environmental organizations. The petitioners challenged the CISWI Definitions Rule on the grounds that its definition of "commercial or industrial waste" was inconsistent with the plain language of CAA section 129, and, therefore, impermissibly constricted the class of "solid waste incineration unit[s]" that were subject to the emission standards of the CISWI Rule. The Court agreed with petitioners and vacated the CISWI Definitions Rule.

In its decision, the Court held that EPA's definition of "commercial or industrial waste," as incorporated in the definition of CISWI units, conflicted with the plain language of CAA section 129(g)(1). That provision defines "solid waste incineration unit" to mean "any facility which combusts any solid waste material" from certain types of establishments, with 4 specific exclusions. The Court stated that, based on the use of the term "any" and the specific exclusions for only certain types of facilities from the definition of "solid waste incineration unit," CAA section 129 unambiguously includes among the incineration units subject to its standards, any facility that combusts any commercial or industrial solid waste material at all—subject only to the 4 statutory exclusions. The Court held that the definitions EPA promulgated in the CISWI Definitions Rule constricted the plain language of CAA section 129(g)(1), because the CISWI Definitions Rule excluded from its universe operating units that combusted solid waste and were designed for or operated with energy recovery.

The rationale EPA provided in 2007 for not regulating SSI units under section 129 is squarely in conflict with the Court's 2007 holding in *NRDC* v. *EPA.* Specifically, the Court stated that the 4 enumerated exemptions in section 129(g)(1) are in fact exclusive, and EPA lacked authority to create additional exemptions. The Court also rejected EPA's interpretation of section 129(h)(2), as articulated in the 2007 notice. The Court found that section 129(h)(2) "simply directs EPA in plain terms to subject a solid waste combustion facility exclusively to section 129 standards, and not to section 112," and that the provision confers no discretion in this respect [3].

Further, EPA has historically taken the position that sewage sludge is solid waste under the RCRA. EPA has taken this position in an EPA letter dated February 12, 1988, to Thomas A. Corbett, Environmental Chemist I, New York State Department of Environmental Quality addressing the regulatory status of certain sewage sludge, as well as in its 1980 Identification and Listing of Hazardous Waste rulemaking (45 FR 33097, May 19, 1980) (included in the docket for this proposed rulemaking).

Finally, on June 4, 2010, EPA proposed a definition of non-hazardous solid waste (75 FR 31844) under the RCRA which is consistent with this historical interpretation. In that proposal, EPA explained its interpretation for purposes of that definition that sewage sludge is solid waste, and, therefore, unit(s) combusting sewage sludge should be regulated under CAA section 129. Although EPA has not taken final action on that proposed rule and will consider all public comments received before taking final action, the proposed rule represents EPA's most recent interpretation regarding this issue and is consistent with its historical interpretation under the RCRA. Therefore, EPA is proposing emission standards for SSI units under CAA section 129.

On September 9, 2009, EPA received a letter from the National Association of Clean Water Agencies stating that SSI units should be regulated under section

[1] *Sierra Club* v. *EPA;* DC Cir. Nos. 06–1066, 07–1063.

[2] *NRDC* v. *EPA;* 489 F. 3d. at 1257–8.

[3] *NRDC* v. *EPA;* 489 F. 3d. at 1260.

112(d) of the Act (included in the docket of today's proposed rulemaking). The National Association of Clean Water Agencies claimed that SSI units are within the scope of the Clean Water Act's definition of "publicly owned treatment works," and that section 112(e)(5) directs EPA to issue emissions standards under section 112(d) for publicly owned treatment works as defined by the CWA. However, EPA issued emissions standards for POTW in 1999 and did not include standards for SSI units in those regulations [4]. In fact, in the proposed emissions standards for POTW, EPA stated that "[s]ewage sludge incineration will be regulated under section 129 of the CAA, and will be included in the source category Other Solid Waste Incinerators[.]" [5] Therefore, EPA has taken the position in its regulation of POTW under the Clean Air Act that section 112(e)(5) does not apply to SSI units and for this reason did not regulate them in its POTW section 112(d) emissions standards. EPA solicits comment on National Association of Clean Water Agencies' claim.

EPA considers SSI units to be "other solid waste incineration units," since that category is intended to encompass all solid waste incineration units that are not included in the first 4 categories identified in CAA section 129 (a) through (d). EPA is proposing, and intends to take final action on, emission standards for SSI units in advance of its re-issuance of emission standards for the remaining OSWI units because these emission standards are needed as part of EPA's fulfillment of its obligations under CAA sections 112(c)(3) and (k)(3)(B)(ii). Clean Air Act section 112(k)(3)(B)(ii) calls for EPA to identify at least 30 HAP which, as the result of emissions from area sources, pose the greatest threat to public health in the largest number of urban areas. EPA must then ensure that sources representing 90 percent of the aggregate area source emissions of each of the 30 identified HAP are subject to standards pursuant to section 112(d) [6]. Sewage Sludge Incineration units are one of the source categories identified for regulation to meet the 90 percent requirement for 7–PAH, Cd, Cr, CDD/CDF, Pb, Mn, Hg, Ni and PCB. EPA is ordered by the Court to satisfy its obligation under section 112(c)(3) and (k)(3)(B)(ii) by January 16, 2011 [7]. Therefore, EPA is proposing and intends to finalize the SSI standards prior to taking action on the remaining source categories that will be regulated under section 129(a)(1)(E).

D. What are the primary sources of emissions and what are the emissions?

Sewage sludge incineration units may be operated by municipalities or other entities. Incineration continues to be used to dispose of sewage sludge, but is increasingly becoming less common. Combustion of solid waste, and specifically sewage sludge, causes the release of a wide array of air pollutants, some of which exist in the waste feed material and are released unchanged during combustion, and some of which are generated as a result of the combustion process itself. The pollutants for which numerical limits must be established, as specified in section 129 of the CAA, include Cd, CO, CDD/CDF, HCl, Hg, NO_X, opacity (where appropriate), PM, Pb, and SO_2. Emissions of the CAA section 129 pollutants from SSI units come from the SSI unit's stack. Fugitive opacity and PM emissions also occur from ash handling. Additional pollution controls will increase costs for facilities that continue to use the incineration disposal method. If the additional costs are high enough, many entities may choose to adopt alternative disposal methods (*e.g.,* surface disposal in landfills or other beneficial land applications).

E. How are the EG implemented?

Standards of performance for solid waste incineration units promulgated under CAA sections 111 and 129 consist of both NSPS applicable to new units, and EG applicable to existing units. Unlike the NSPS, the EG are not themselves directly enforceable. Rather, the EG are implemented and enforced through either an EPA-approved State plan or a promulgated Federal plan. States are required to submit a plan to implement and enforce the EG to EPA for approval not later than 1 year after EPA promulgates the EG (CAA section 129(b)(2)). The State plan must be "at least as protective as" the EG and must ensure compliance with all applicable requirements not later than 3 years after the State plan is approved by EPA, but not later than 5 years after the relevant EG are promulgated. Likewise, the requirements of the State plan are to be effective as expeditiously as possible following EPA approval of the plan, but must be effective no later than 3 years after the State plan is approved or 5 years after the EG are promulgated, whichever is earlier (CAA section 129(f)(2)). EPA's procedures for submitting and approving State plans are set forth in 40 CFR part 60, subpart B. When a State plan is approved by EPA, the plan requirements become federally enforceable, but the State has primary responsibility for implementing and enforcing the plan.

EPA is required to develop, implement, and enforce a Federal plan for solid waste incineration units located in any State which has not submitted an approvable State plan within 2 years after the date of promulgation of the relevant EG (CAA section 129(b)(3)). The Federal plan must assure that each solid waste incineration unit subject to the Federal plan is in compliance with all provisions of the EG not later than 5 years after the date the relevant guidelines are promulgated. EPA views the Federal plan as a "place-holder" that remains in effect only until such time as a State without an approved plan submits and receives EPA approval of its State plan. Once an applicable State plan has been approved, the requirements of the Federal plan no longer apply to solid waste incineration units covered by that State plan.

III. Summary of the Proposed Rules

This preamble discusses the proposed standards and guidelines as they apply to the owner or operator of a new or existing SSI unit. This preamble also describes the major requirements of the SSI regulations. For a full description of the proposed requirements and compliance times, see the attached regulations.

A. Applicability of the Proposed Standards

The proposed standards and guidelines apply to owners or operators of an incineration unit burning solid waste at wastewater treatment facilities (as defined in 40 CFR 60.4780 and 40 CFR 60.5065). A SSI unit is an enclosed device using controlled flame combustion that burns sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter. The affected facility is each individual SSI unit. The SSI standards in subparts LLLL and MMMM apply to new and existing SSI units that burn sewage sludge as defined in the subparts.

B. Summary of the Proposed EG

EPA is proposing 2 subcategories for existing sources based on their incinerator design: (1) MH incinerators and (2) FB incinerators. Table 1 of this preamble summarizes the proposed

[4] *See* 64 FR 57572 (Oct. 26, 1999).

[5] *See* 63 FR 66084, 66087 (Dec. 1, 1998).

[6] CAA section 112(c)(3) and section 112(k)(3)(B)(ii).

[7] *Sierra Club* v. *Jackson;* D.D.C. No. 1:01CV01537.

emission limits for existing SSI units for each subcategory. These standards would apply at all times.

TABLE 1—PROPOSED EMISSION LIMITS FOR EXISTING SSI UNITS

Pollutant	Units	Emission limit for MH incinerators	Emission limit for FB incinerators
Cd	mg/dscm @ 7% 0_2	0.095	0.0019
CDD/CDF, TEQ	ng/dscm @ 7% 0_2	0.32	0.056
CDD/CDF, TMB	ng/dscm @ 7% 0_2	5.0	0.61
CO	Ppmvd @ 7% 0_2	3,900	56
HCl	Ppmvd @ 7% 0_2	1.0	0.49
Hg	mg/dscm @ 7% 0_2	0.02	0.0033
NO_X	Ppmvd @ 7% 0_2	210	63
Opacity	%	10	0
Pb	mg/dscm @ 7% 0_2	0.30	0.0098
PM	mg/dscm @ 7% 0_2	80	12
SO_2	Ppmvd @ 7% 0_2	26	22

C. Summary of the Proposed NSPS

As explained in IV.C.2, EPA is proposing to require all new sources, regardless of incinerator design, meet the emission limits based on the best-performing FB incinerator. Table 2 of this preamble summarizes the proposed emission limits for SSI units subject to the NSPS. These standards would apply at all times.

TABLE 2—PROPOSED EMISSION LIMITS FOR NEW SSI UNITS

Pollutant	Units	Emission limit for MH incinerators	Emission limit for FB incinerators
Cd	mg/dscm @ 7% 0_2	0.00051	0.00051
CDD/CDF, TMB	ng/dscm @ 7% 0_2	0.024	0.024
CDD/CDF, TEQ	ng/dscm @ 7% 0_2	0.0022	0.0022
CO	ppmvd @ 7% 0_2	7.4	7.4
HCl	ppmvd @ 7% 0_2	0.12	0.12
Hg	mg/dscm @ 7% 0_2	0.0010	0.0010
NO_X	ppmvd @ 7% 0_2	26	26
Opacity	%	0	0
Pb	mg/dscm @ 7% 0_2	0.00053	0.00053
PM	mg/dscm @ 7% 0_2	4.1	4.1
SO_2	ppmvd @ 7% 0_2	2.0	2.0

D. Summary of Performance Testing and Monitoring Requirements

The proposed rule would require all new and existing SSI units to demonstrate initial and annual compliance with the emission limits and combustion stack opacity limits using EPA-approved emission test methods.

For existing SSI units, the proposed rule would require initial and annual emissions performance tests (or continuous emissions monitoring as an alternative), continuous parameter monitoring, and annual inspections of air pollution control devices that may be used to meet the emission limits. Additionally, existing units would also be required to conduct initial and annual opacity tests for the combustion stack and a one-time Method 22 (*see* 40 CFR part 60, appendix A–7) visible emissions test of the ash handling operations to be conducted during the next compliance test.

For new SSI units, the proposed rule would require initial and annual emissions performance tests (or continuous emissions monitoring as an alternative), bag leak detection systems for FF controlled units, as well as continuous parameter monitoring and annual inspections of air pollution control devices that may be used to meet the emission limits. The proposal would require all new SSI units to install a CO CEMS. New units would also be required to conduct initial and annual opacity tests for the combustion stack and Method 22 visible emissions testing of the ash handling operations would be required during each compliance test.

For existing SSI units, use of Cd, CO, HCl, NO_X, PM, Pb or SO_2 CEMS; ISTMMS; and ISTDMS (continuous sampling with periodic sample analysis) would be approved alternatives to parametric monitoring and annual compliance testing. For new SSI units, CO CEMS would be required, and use of Cd, HCl, NO_X, PM, Pb or SO_2 CEMS; ISTMMS; and ISTDMS (continuous sampling, with periodic sample analysis) would be approved alternatives to parametric monitoring and annual compliance testing.

E. Other Requirements for New and Existing SSI Units

Owners or operators of new or existing SSI units would be required to meet operator training and qualification requirements, which include: Ensuring that at least 1 operator or supervisor per facility complete the operator training course, that qualified operator(s) or supervisor(s) complete an annual review or refresher course specified in the regulation, and that they maintain plant-specific information, updated annually, regarding training.

Owners or operators of new SSI units would be required to conduct a siting analysis, which includes submitting a report that evaluates site-specific air

pollution control alternatives that minimize potential risks to public health or the environment, considering costs, energy impacts, nonair environmental impacts and any other factors related to the practicability of the alternatives.

F. Recordkeeping and Reporting Requirements

Records of the initial and all subsequent stack or PS tests, deviation reports, operating parameter data, continuous monitoring data, maintenance and inspections on the air pollution control devices, the siting analysis (for new units only), monitoring plan and operator training and qualification must be maintained for 5 years. The results of the stack tests and PS tests and values for operating parameters would be required to be included in initial and subsequent compliance reports.

G. Electronic Data Submittal

Electronic data collection is commonly employed to collect and analyze data for a variety of applications, such as the CAA Acid Rain Program. Both industry and the public benefit from electronic data collection in that it increases the ease of submitting the data as well as increasing the accessibility and transparency of these data.

EPA must have performance test data to conduct effective reviews of CAA sections 112 and 129 standards, as well as for many other purposes including compliance determinations, emission factor development and annual emission rate determinations. In conducting these required reviews, EPA has found it ineffective and time consuming, not only for us, but also for regulatory agencies and source owners and operators to locate, collect, and submit emissions test data because of varied locations for data storage and varied data storage methods. One improvement that has occurred in recent years is the availability of stack test reports in electronic format as a replacement for cumbersome paper copies.

In this action, EPA is proposing a step to improve data accessibility and increase the ease and efficiency of reporting for sources. Specifically, we are proposing that owners and operators of SSI facilities be required to submit to EPA's ERT database the electronic copies of reports of certain performance tests required under this rule. Data will be entered through an electronic emissions test report structure called the ERT that will be used whenever emissions testing is conducted. The ERT was developed with input from stack testing companies who generally collect and compile performance test data electronically and offices within State and local agencies that perform field test assessments. The ERT is currently available, and access to direct data submittal to EPA's electronic emissions database (WebFIRE) will become available by December 31, 2011.

The requirement to submit source test data electronically to EPA would not require any additional performance testing and would apply to those performance tests conducted using test methods that are supported by the ERT. The ERT contains a specific electronic data entry form for most of the commonly used EPA reference methods. The Web site listed below contains a listing of the pollutants and test methods supported by the ERT. In addition, when a facility submits performance test data to WebFIRE, there will be no additional requirements for emissions test data compilation. Moreover, we believe industry will benefit from development of improved emission factors, fewer follow-up information requests, and better regulation development as discussed below. The information to be reported is already required for the existing test methods and is necessary to evaluate the conformance to the test method.

One major advantage of submitting source test data through the ERT is that it would provide a standardized method to compile and store much of the documentation required to be reported by this rule while clearly stating what testing information would be required. Another important benefit of submitting these data to EPA at the time the source test is conducted is that it should substantially reduce the effort involved in data collection activities in the future. If EPA had source category data, there would likely be fewer or less substantial data collection requests in conjunction with prospective residual risk assessments or technology reviews. This results in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and EPA (in terms of preparing and distributing data collection requests).

State/local/tribal agencies may also benefit from the reduced burden associated with receipt of electronic information opposed to having to process paper forms. Finally, another benefit of submitting these data to WebFIRE electronically is that these data would improve greatly the overall quality of the existing and new emission factors by supplementing the pool of emissions test data upon which the emission factor is based and by ensuring that data are more representative of current industry operational procedures. A common complaint heard from industry and regulators is that emission factors are outdated or not representative of a particular source category. Receiving and incorporating data for most performance tests would ensure that emission factors, when updated, represent accurately the most current operational practices. In summary, receiving test data already collected for other purposes and using them in the emission factors development program would save industry, State/local/tribal agencies and EPA, time and money and work to improve the quality of emission inventories and related regulatory decisions.

As mentioned earlier, the electronic database that would be used is EPA's WebFIRE, which is a Web site accessible through EPA's TTN Web. The WebFIRE Web site was constructed to store emissions test data for use in developing emission factors. A description of the WebFIRE database can be found at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main*.

The ERT would be able to transmit the electronic report through EPA's CDX network for storage in the WebFIRE database. Although ERT is not the only electronic interface that can be used to submit source test data to the CDX for entry into WebFIRE, it makes submittal of data very straightforward and easy. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/ert_tool.html*.

H. Title V Permit Requirements

All new and existing SSI units regulated by the final SSI rule would be required to apply for and obtain a Title V permit. These Title V operating permits would assure compliance with all applicable requirements for regulated SSI units, including all applicable CAA section 129 requirements.[8]

The permit application deadline for a CAA section 129 source applying for a Title V operating permit depends on when the source first becomes subject to the relevant Title V permits program. If a regulated SSI unit is a new unit and is not subject to an earlier permit application deadline, a complete Title V permit application must be submitted on or before the relevant date below.

- For a SSI unit that commenced operation as a new source on or before the promulgation date of 40 CFR part 60, subpart LLLL, the source must submit a complete Title V permit application no later than 12

[8] 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.

months after the promulgation date of 40 CFR part 60, subpart LLLL; or

- For a SSI unit that commences operation as a new source after the promulgation of 40 CFR part 60, subpart LLLL, the source must submit a complete Title V permit application no later than 12 months after the date the SSI unit commences operation as a new source.[9]

If the SSI unit is an existing unit and is not subject to an earlier permit application deadline, then the source must submit a complete Title V permit application by the earlier of the following dates:

- Twelve months after the effective date of any applicable EPA-approved CAA section 111(d)/129 plan (i.e., an EPA approved State or tribal plan that implements the SSI EG); or
- Twelve months after the effective date of any applicable Federal plan; or
- Thirty-six months after promulgation of 40 CFR part 60, subpart MMMM.

For any existing SSI unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation of 40 CFR part 60, subpart MMMM, applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable CAA section 111(d)/129 plan is approved by EPA and becomes effective. (*See* CAA sections 129(e), 503(c), 503(d), and 502(a) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).)

If the SSI unit is subject to Title V as a result of some triggering requirement(s) other than those mentioned above, for example, a SSI unit may be a major source (or part of a major source), then you may be required to apply for a Title V permit prior to the deadlines specified above. If more than 1 requirement triggers a source's obligation to apply for a Title V permit, the 12-month time frame for filing a Title V permit application is triggered by the requirement which first causes the source to be subject to Title V.[10]

For additional background information on the interface between CAA section 129 and Title V, including EPA's interpretation of section 129(e), information on updating existing Title V permit applications and reopening existing Title V permits, see the final "Federal Plan for Commercial and Industrial Solid Waste Incineration," October 3, 2003 (68 FR 57518), as well as the "Summary of Public Comments and Responses" document in the OSWI docket (EPA–HQ–OAR–2003–0156).

[9] CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).

[10] CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1)(i), 71.3(a) and (b) and 71.5(a)(1)(i).

I. Proposed Applicability Dates of the NSPS and EG

Under these proposed standards, new SSI units that commence construction on or after October 14, 2010 or that are modified 6 months or more after the date of promulgation, would have to meet the NSPS emission limits of 40 CFR part 60, subpart LLLL within 6 months after the promulgation date of the standards or upon startup, whichever is later.

Under the proposed EG, and consistent with CAA section 129(b)(2) and 40 CFR part 60, subpart B, states are required to submit State plans containing the existing source emission limits of subpart MMMM of this part, and other requirements to implement and enforce the EG within 1 year after promulgation of the EG. State plans apply to existing SSI in the State (including SSI that are modified prior to the date 6 months after promulgation) and must be at least as protective as the EG.

The proposed EG would require existing SSI to demonstrate compliance with the standards as expeditiously as practicable after approval of a State plan, but no later than 3 years from the date of approval of a State plan or 5 years after promulgation of the EG, whichever is earlier. Consistent with CAA section 129, EPA expects states to require compliance as expeditiously as practicable. However, because we believe that many SSI units will find it necessary to retrofit existing emissions control equipment and/or install additional emissions control equipment in order to meet the proposed limits, EPA anticipates that states may choose to provide the 3 year compliance period allowed by CAA section 129(f)(2). If EPA does not approve a State plan or issue a Federal plan, then the compliance date is 5 years from the date of the final rule.

EPA intends to develop a Federal plan that will apply to existing SSI units in any State that has not submitted an approved State plan within 2 years after promulgation of the EG. The proposed EG would allow existing SSI units subject to the Federal plan up to 5 years after promulgation of the EG to demonstrate compliance with the standards, as allowed by CAA section 129(b)(3).

IV. Rationale

All standards established pursuant to CAA section 129(a)(2) must reflect MACT, the maximum degree of reduction in emissions of certain listed air pollutants that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for each category. This level of control is referred to as a MACT standard.

The minimum level of stringency is called the "MACT floor," and CAA section 129(a)(2) sets forth differing levels of minimum stringency that EPA's standards must achieve, depending on whether they regulate new or existing sources. For new units, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar unit. Emission standards for existing units may be less stringent than standards for new units, but cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of units in the category. These requirements constitute the MACT floor for new and existing sources; however, EPA may not consider costs or other impacts in determining the MACT floors. EPA must consider cost, nonair quality health and environmental impacts and energy requirements in connection with any standards that are more stringent than the MACT floor (beyond-the-floor controls).

In general, MACT analyses involve an assessment of the emissions from the best-performing units in a source category. The assessment can be based on actual emissions data, on knowledge of the air pollution control in place in combination with actual emissions data, or on State regulatory requirements that may enable EPA to estimate the actual performance of the regulated units and other relevant emissions information. For each source category, the assessment involves a review of actual emissions data with an appropriate accounting for emissions variability. Other methods of estimating emissions can be used provided that the methods can be shown to provide reasonable estimates of the actual emissions performance of a source or sources.

As stated earlier, the CAA requires that MACT for new sources be no less stringent than the emission control achieved in practice by the best-controlled similar unit. Under CAA section 129(a)(2), EPA determines the best control currently in use for a given pollutant and establishes the MACT floor at the emission level achieved by that control with an appropriate accounting for emissions variability. Once the MACT floor determinations are done for new sources, we consider regulatory options more stringent than the MACT floor level of control that could result in reduced emissions. More

stringent potential regulatory options might reflect controls used on other sources that could be applied to the source category in question.

For existing sources, the CAA requires that MACT be no less stringent than the average emission limitation achieved by the best-performing 12 percent of units in a source category. EPA must determine some measure of the average emission limitation achieved by the best-performing 12 percent of units in each subcategory to establish the MACT floor for existing units. Once the MACT floor determinations are done for each subcategory of existing units, we consider various regulatory options more stringent than the MACT floor level of control that could result in lower emissions. More stringent beyond-the-floor regulatory options reflect other or additional controls capable of achieving better performance.

A. Subcategories

The CAA allows EPA to subcategorize a source category based on differences in class, type, or size. EPA is proposing to subcategorize SSI units into 2 subcategories, based on differences in the design type of the incineration units.

To EPA's knowledge, there are 2 types of incinerators currently used to combust sewage sludge: MH and FB incinerators. Of the 218 SSI units in operation, 55 use the FB design, while 163 use the MH design. These two types use significantly different combustor designs. A. MH incinerator consists of a vertical cylinder containing from 6 to 12 horizontal hearths and a rotating center shaft with rabble arms. Biosolids (*i.e.,* sewage sludge) enter the top hearth and flow downward while combustion air flows from the bottom to the top. The MH is divided into 3 zones. The upper hearths comprise the drying zone in which water and some organic compounds are evaporated from the biosolids. The middle hearths comprise the combustion zone. The exposure to the combustion gas and biosolids to high temperature is only in this section and residence time of the gas is short. The lower hearths form the cooling zone, where ash is cooled as its heat is transferred to the incoming combustion air. Some MH incinerators have an additional zone above the drying hearths which can be used as an afterburner to combust the organics and CO generated in the lower hearths. Multiple hearth units are sensitive to any change in the feed, such as feed moisture and feed rate. Since the emissions of CO and organic compounds are dependent on the temperature of the top hearth, any changes occurring in the biosolids input can cause operational upset with momentary drop in top hearth temperature and an increase in emissions. In order to assure proper startup, shutdown, and modulation of combustion temperatures, fuels (*e.g.,* natural gas and distillate oil) may be added to the combustion chamber.

In a FB incinerator, the reactor is a vertical steel shell comprised of 4 sections. The lower section is called the windbox and acts as a plenum in which combustion air is received. Above the windbox is a refractory arch. The section above the refractory arch is filled with sand and is called the bed area or combustion zone. Hot air is distributed homogeneously throughout the FB. The intensive mixing of the solid and gas in the fluidized State results in a high heat transfer resulting in rapid combustion of the biosolids. The section above the bed is the freeboard or disengagement zone. The freeboard provides 6 to 7 seconds of gas residence time, which completes the combustion of any volatile hydrocarbons escaping from the bed.

The differences between the 2 combustor designs result in significant differences in emissions, size of the flue gas stream, ability to handle variability in the feeds, control of temperature and other process variables, auxiliary fuel use and other characteristics. Generally, FB incinerators have lower emissions of NO_X, organic compounds, CDD/CDF and CO than MH incinerators due to the combustion temperature, mixing, and residence time differences. Intermittent operations, involving frequent shutdown and startup, are generally easier and more rapid for FB incinerators than MH incinerators. Additionally, FB incinerators have better capability of handling feeds with varying moisture and volatile contents. Lower excess air and auxiliary fuel is required to operate FB incinerators resulting in smaller flue gas flow rates and consequently smaller sized downstream control devices.

To reflect the differences in their combustion mechanisms, 2 subcategories, FB and MH, were developed for new and existing SSI sources.

We are requesting comment on whether other combustor designs are used at SSI units, and, if so, we are requesting emissions information from stack tests conducted on those units.

We are also aware that sewage sludge may be incinerated in certain commercial or industrial units and energy recovery units that are subject to the recently proposed CISWI rules (40 CFR part 60, subparts CCCC and DDDD of this part). Therefore, we are proposing that sewage sludge that is incinerated in combustion units located at commercial and industrial facilities be subject to the CISWI standards rather than the SSI standards. We are requesting comment on the appropriateness of this proposed decision. While we are not aware of other combustion units that incinerate sewage sludge, we are requesting comment on whether such other units exist, and, if so, what the content of the combusted materials is (i.e., constituents in the sewage sludge), the amount of sewage sludge incinerated, and whether these units should be subject to SSI standards or subject to other section 129 standards.

B. Format for the Proposed Standards and Guidelines

The EPA selected emission limitations as the format for the proposed SSI standards and guidelines. As required by section 129 of the CAA, the proposed standards and guidelines would establish numerical emission limitations for Cd, CO, CDD/CDF, HCl, Pb, Hg, opacity, NO_X, PM, and SO_2. For regulating Cd, Pb, Hg, and total PM, the EPA is proposing numerical concentration limits in milligrams per dry standard cubic meter (mg/dscm). Emission limits of CDD/CDF are in units of total ng/dscm, based on measuring emissions of each tetra through octa-chlorinated dibenzo-pdioxin and dibenzofuran and summing them. For CO, HCl, NO_X, and SO_2, the proposed standards and guidelines are volume concentrations, ppmvd. Standards and guidelines for opacity are proposed on a percentage basis. All measurements are corrected to 7 percent oxygen to provide a common basis.

The EPA selected an outlet concentration format because outlet data are available for SSI units and characterize the best performing SSI units. In addition to numerical emission limits, the SSI standards include operator training and qualification provisions and siting requirements (for new sources only) as required by section 129.

EPA understands that the metal emissions from SSI units are influenced by the metals content in the sludge burned. It is not clear from the data available to EPA whether the sludge burned during the emissions tests (that were used to establish the MACT floor) represent typical sludge composition/concentrations or are closer to minimum or maximum levels. We are also requesting additional sludge metals content information from the best performing sources collected during emissions stack tests so that we can

appropriately account for any differences in metal content of the sludge in the final standards.

C. MACT Floor Determination Methodology

Section 129 (a)(2) of the CAA requires that EPA determine the emissions control that is achieved in practice by the best-controlled similar unit when establishing the MACT floor for new units, and the average emission limitation achieved by the best-performing 12 percent of units when establishing the MACT floor for existing units. Section 129(a)(4) states that the standards promulgated under section 129 shall specify a numerical emissions limitation for each pollutant enumerated in that provision. Section 129(a)(2) requires EPA to establish standards requiring the "maximum degree of reduction of emissions." "Maximum degree of reduction of emissions," in turn is defined in section 129(a)(2) as including a minimum level of control (known as the MACT floor). EPA's long-standing interpretation is that the combination of section 129(a)(4), requiring numerical standards for each enumerated pollutant, and section 129(a)(2), requiring that each such standard be at least as stringent as the MACT floor, supports that floors be derived for each pollutant based on the emissions levels achieved for each pollutant.

The emission limits proposed also account for variability. EPA must exercise its judgment, based on an evaluation of the relevant factors and available data, to determine the level of emissions control that has been achieved by the best performing SSI units under variable conditions. The Court has recognized that EPA may consider variability in estimating the degree of emission reduction achieved by the best-performing sources and in setting MACT floors that the best performing sources can expect to meet "every day and under all operating conditions.[11]

Maximum Achievable Control Technology and other technology-based standards are necessarily derived from short-term emissions test data, but such data are not representative of the range of operating conditions that the best-performing facilities face on a day-to-day basis. In statistical terms, each test produces a limited data sample, and not a complete enumeration of the available data for performance of the unit over a long period of time[12]. EPA, therefore, often needs to adjust the short-term data to account for these varying conditions. The types of variability that EPA attempts to account for include operational distinctions between and within tests at the same unit.

"*Between-test variability*" can occur even where conditions appear to be the same when 2 or more tests are conducted. Variations in emissions may be caused by different settings for emissions testing equipment, different field teams conducting the testing, differences in sample handling or different laboratories analyzing the results. Identifying an achieved emissions level for best-performing sources needs to account for these differences between tests, in order for "a uniform standard [to] be capable of being met under most adverse conditions which can reasonably be expected to recur[.]"[13]

The same types of differences leading to between-test variability also cause variations in results between various runs comprising a single test, or "within-test variability." A single test at a unit usually includes at least 3 separate test runs. (*See* 40 CFR 63.7(e)(3) for MACT standards under CAA section 112 and 40 CFR 60.8(f) for NSPS under CAA section 111). Each data point should be viewed as a snapshot of actual performance. Along with an understanding of the factors that may affect performance, each of these snapshots gives information about the normal and unavoidable variation in emissions that would be expected to recur over time.

One approach to estimating future variability that may be used is the UPL. The UPL is an appropriate statistical tool to use in determining variability when there is a limited sampling of the source category. An UPL (*i.e.,* sample mean plus a multiplier times the standard deviation) for a future observation is the upper end of a range of values that will, with a specified degree of confidence, contain the next (or some other pre-specified) randomly selected observation from a population. In other words, UPL estimates the high end of the range in which future values will fall, with a certain probability, based on present or past background samples taken. Given this definition, the UPL is the value below which the average result of a future emissions test consisting of 3 test run observations (3-run average) from the source to be tested is expected to fall below with a stated level of confidence (*e.g.,* 99 percent). Therefore, should a future test condition be selected randomly from any of these sources, we can be 99 percent confident that the reported level will fall below a MACT floor emissions limit calculated using an UPL. Since a source must demonstrate compliance with the MACT floor using the average of a 3-run test, the appropriate test condition to use to assess variability is 3 runs. If a source had to demonstrate compliance by showing that each individual test run was below the MACT floor emission limit, it would be appropriate to use a future test condition of 1 run. (*See* further discussion in section IV.C.2 of this preamble.) We are soliciting comment on all aspects of our variability analysis.

EPA understands that the metal emissions from a SSI unit may vary due to the metals content in the sludge burned. We are requesting additional sludge metals content information collected during emissions stack tests so that we can appropriately account for any differences in metal content of the sludge in the final standards.

1. MACT Floor Analyses Data Set

As stated earlier, the CAA requires that MACT for new sources be no less stringent than the emissions control achieved in practice by the best-controlled similar unit. For existing sources, the CAA requires that MACT be no less stringent than the average emission limitation achieved by the best-performing 12 percent of units in a source category. Because the number of units in different subcategories may be different, the number of units that represent the best-performing 12 percent of sources in different subcategories may be different. Also, mathematically, the number of units that represent the best-performing 12 percent of the units in a subcategory will not always be an integer. To ensure that each MACT standard is based on at least 12 percent of the units in a subcategory, EPA has determined that it is appropriate to always round up to the nearest integer when 12 percent of a given subcategory is not an integer. For example, if 12 percent of a subcategory is 4.1, the standards will be based on the best-performing 5 units even though rounding conventions would normally lead to rounding down to 4 units. As discussed earlier, there are 218 SSI units, composed of 163 MH incinerators and 55 FB incinerators. This procedure results in a top 12 percent comprised of

[11] *Mossville Environmental Action Now* v. *EPA;* 370 F.3d at 1232, 1241–42 DC Cir 2004.

[12] *Natrella, Experimental Statistics,* National Bureau of Standards Handbook 91, chapter 1 revised ed., 1966.)

[13] National Lime Association I, 627 F.2d at 431, n. 46 and Portland Cement Association, 486 F.2d at 396, "a single test offered a weak basis" for inferring that plants could meet the standards.

20 MH incinerators and 7 FB incinerators.

Information collection request surveys were sent to 9 municipalities operating SSI units to collect emissions information. To select the surveyed owners, EPA reviewed the inventory of SSI units for the control devices being operated, and identified a subset of units expected to have the lowest emissions based on the type of unit and the installed air pollution controls. EPA believes these controls achieve the most reductions possible for the CAA section 129 pollutants, and thereby allow EPA to identify for each pollutant the units with the lowest emissions. For example, units were selected that operated more than one of the following technologies: activated carbon injection to reduce Hg and CDD/CDF; regenerative thermal oxidizer or afterburners to reduce CO and organics; wet ESP to reduce fine particulate; high efficiency scrubbers such as packed bed scrubbers and impingement tray scrubbers to reduce PM, Cd, Pb, particulate Hg and acid gases such as HCl and SO_2; and units with multiple control devices that could reduce PM, Cd, Pb, particulate Hg, such as a venturi scrubber in combination with an impingement scrubber and a wet ESP or another particulate control device. See the memorandum "MACT Floor Analysis for the Sewage Sludge Incinerator Source Category," which is in the SSI docket for a list of municipalities that were sent an ICR and their controls.

In contrast to MWC units or CISWI units, SSI units receive a homogenous type of waste to burn. There are variations in the amount of each of the CAA section 129 pollutants present, but because all SSI units are required to meet the CWA SSI discharge and emission requirements (40 CFR part 503), the variations are not as significant as variations that would occur if different types of materials were combusted (*e.g.,* sewage sludge, coal, wood). Part 503 establishes daily average concentration limits for Pb, Cd, and other metals in sewage sludge that is disposed of by incineration. Part 503 also requires that SSI meet the National Emission Standards for Beryllium and Hg in subparts C and E, respectively, of 40 CFR part 61. In order to meet the 40 CFR part 503 standards, facilities are already incorporating management practices and measures to reduce waste and limit the concentration of pollutants in the sludge sent to SSI units, such as segregating contaminated and uncontaminated wastes and establishing discharge limits or pre-treatment standards for non-domestic users discharging wastewater to POTW. Thus, SSI units burn a relatively homogenous waste, and non-technology measures to reduce emissions are already being taken. As a result, the data used to develop the MACT emission limits reflect the control technologies used at each facility, and the other HAP emission reduction approaches, such as management practices each facility is following to comply with the CWA part 503 standards. For this reason, we believe that the sources identified for testing and the resulting emissions information received from the surveyed SSI units represent the best-performing SSI units.

From the 9 surveyed municipalities, EPA collected data from 16 units that were in operation (11 MH incinerators and 5 FB incinerators). The surveyed information was supplemented with test information for 9 MH SSI units collected from State environmental agencies public databases. In total, emissions information was collected from 5 FB incinerators and 20 MH incinerators from facilities responding to the ICR and additional test reports provided by State environmental agencies. However, not every test report contained information on all pollutants. Except for CDD/CDF and SO_2, test information for most of the 9 CAA section 129 pollutants was available from 5 FB incinerators. For CDD/CDF and SO_2, data from only 3 FB incinerators were available. Depending on the pollutant, the number of MH incinerators with emissions information ranges from 5 to 19. The MACT floor analysis was then conducted using all the emissions information for each pollutant in each subcategory (*i.e.,* all 5 FB incinerators for Cd and all 14 MH incinerators for Cd), as this information includes emissions data from the population of best-performing units.

Test results from each of these units are based on the results of at least 3 individual runs per test, meaning that one would expect MACT floor calculations based on a population of 21 FB runs (7 FB multiplied by 3 runs per FB) and on a population of 60 MH runs (20 MH FB multiplied by 3 runs per MH). While EPA does not have actual emissions test data for the population of units that represent the best-performing 12 percent, the statistical technique described below is the approach we used to establish the existing source MACT floor. The MACT floor calculations are based on all the actual data received, for example, a population of 15 MH runs from 5 MH incinerators for CDD/CDF. Because the emissions data are normally distributed, or can be transformed to be normally distributed (using the log-normal transformation of the data), EPA is able to employ statistical techniques to determine the minimum number of observations needed to accurately characterize the distribution of the best performing 12 percent of units in each subcategory. This technique is necessary to assure that the characteristics of the sampled data set mirror those of the best-performing 12 percent of units in the source category.

EPA used this statistical technique because of the lack of data from the full set of the best-performing 12 percent of sources. While Congress adopted identical language describing the MACT floor calculation in section 129(a)(2) as it did in section 112(d)(3), the latter section includes a provision stating that the MACT floor for existing sources cannot be less stringent than "the average emission limitation achieved by the best-performing 12 percent of the existing sources (for which the Administrator has emissions information)." Section 129, however, simply states that the existing source MACT floor cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of the existing sources in the category. Therefore, while we believe Congress intended for the MACT floor calculation under each section of the CAA to be the same, this difference in the text of the 2 sections requires us to establish the MACT floor for section 129 source categories based on the best-performing 12 percent of sources in the category. Because we do not have that data at this time, the statistical technique described below is the only manner in which we can establish the existing source MACT floor on that basis. We request that commenters provide additional emissions stack test data and supporting documentation, as that may enable us to establish a final MACT floor based on a more complete data set.

In order to assess whether or not the minimum number of samples collected adequately characterizes the population, a statistical equation was applied for each subcategory. If the number of observations collected equals or exceeds the required minimum number of observations calculated using the statistical equation, then the MACT floor calculations of the sampled data set are consistent with what the MACT floor calculations would have been had they been performed on the complete data set from the best-performing 12 percent of the population. The sample size calculation is discussed in more detail in the memorandum "MACT Floor Analysis for the Sewage Sludge Incinerator Source Category," which is

in the SSI docket. The results of the calculation show that for the population of 7 FB incinerators, which comprises 12 percent of the source category, the minimum number of test runs that need to be collected is 10, and the actual number collected, for the pollutant with the least amount of test data, including late arriving data, is 12. Similarly, the calculation shows that for the population of 20 MH incinerators which comprise 12 percent of the source category, the minimum number of test runs that need to be collected is 14, and the actual number collected, for the pollutant with the least amount of test data, is 15. Based on EPA's assessment, the data set meets the minimum size needed to characterize the population of 12 percent of the best-performing units for all pollutants, when late-arriving data are included. EPA determined that the number of observations of data collected accurately represent the 12 percent of the best-performing sources in each subcategory. Data received too late to incorporate in the analysis for the proposed rule will be included in the analysis for the final rule along with any relevant data received during the comment period. However, EPA conducted a preliminary review of the late data received subsequent to the final analyses, *e.g.,* MACT floor ranking, impacts, etc., and determined that based on this preliminary review, the data would have minimal impact on the proposed standards. For more information on the outcome of this review, please refer to the "MACT Floor Analysis for the Sewage Sludge Incinerator Source Category," memorandum, which is in the SSI docket.

2. Variability Calculation

To conduct the existing source MACT floor analysis for each pollutant, individual SSI units in each subcategory for which we had emissions test data were ranked based on their average emission levels of the pollutant from lowest to highest. The MACT floor was calculated as the average of the test runs from the best-performing (*i.e.,* lowest emitting) 12 percent of sources. For the SSI source category, all the quality-assured emissions information from the ICR responses and additional test reports collected were used in the MACT floor calculation. That is, for each pollutant, the MACT floor emission level was calculated as the average emission limit for all the test runs from the quality assured emissions data collected.

The first step in the statistical analysis includes a determination of whether the data used for each MACT floor calculation were normally or log-normally distributed. If the data were normally distributed (*e.g.,* similar to a typical bell curve), then further variability analyses could be conducted on the data set. If the data were not normally distributed (for example, if the data were asymmetric or skewed to the right or left), then the type of distribution (*e.g.,* log-normal) was determined and a data transformation was performed (*e.g.,* taking the natural log of the data) to normalize the data prior to conducting the variability analysis. Two statistical measures, skewness and kurtosis, were examined to determine if the data were normally or log-normally distributed. For details on the statistical analysis, see the memorandum "MACT Floor Analysis for the Sewage Sludge Incinerator Source Category," which is in the SSI docket.

For the existing source variability analysis, all the emissions test runs reported for the best-performing 12 percent of units in each subcategory were identified. By including multiple emissions tests from units with a test average in the top 12 percent, EPA can evaluate intra-unit variability of emissions tests over time, considering variability in control device performance, unit operations, and fuels fired during the test. As discussed previously, the UPL was used for the SSI MACT floor variability analysis.

For the existing source analysis, the 99 percent UPL values were calculated for each pollutant and for each subcategory using the test run data for those units in the best-performing 12 percent. Since compliance with the MACT floor emission limit is based on the average of a 3-run test, Equation 1 shows the UPL is calculated as follows:

$$UPL = \bar{x} + t(0.99, n-1) \times \sqrt{s^2 \times \left(\frac{1}{n} + \frac{1}{m}\right)} \qquad \text{(Eq. 1)}$$

Where:

n = Number of test runs (i.e., sample size)
m = Number of test runs in the compliance average
s = Standard deviation of the emissions test data
x = Mean, i.e., average of the emissions test data
$t0.99, (n-1)$ = t-statistic for 99 percent significance and a sample size of n.

This calculation was performed using the following 2 Microsoft Excel spreadsheet functions:

Normal distribution: 99 percent UPL = AVERAGE (Test Runs in Top 12 percent) + [STDEV(Test Runs in Top 12 percent) × TINV(2 * 0.99, n − 1 degrees of freedom)*SQRT((1/n)+1/3))], for a one-tailed t-value (with 2 × probability), probability of 0.01, and sample size of n.

Lognormal distribution: 99 percent UPL = EXP{AVERAGE(Natural Log Values of Test Runs in Top 12 percent) + [STDEV(Natural Log Values of Test Runs in Top 12 percent) × TINV(2 * 0.99, n − 1 degrees of freedom) * SQRT((1/n)+1/3))]}, for a one-tailed t-value (with 2 × probability), probability of 0.01, and sample size of n.

The 99 percent UPL represents the value which one can expect the mean of future 3-run performance tests from the best-performing 12 percent of sources to fall below, with 99 percent confidence, based upon the results of the independent sample of observations from the same best-performing sources. In establishing the limits, the UPL values were rounded up to 2 significant figures. For example, a value of 1.42 would be rounded to 1.5 because a limit of 1.4 would be lower than the calculated MACT floor value.

The summary statistics and analyses are presented in the docket and further described in sections IV.C.4 and IV.C.5 of this preamble. The calculated UPL values for existing sources (which are based on emissions data from the sources representing the best-performing 12 percent of sources and evaluate variability) were selected as the proposed MACT floor emission limits for the 9 regulated pollutants in each subcategory.

To determine the MACT floor for new sources, we used an UPL calculation similar to that for existing sources, except the best-performing similar source's data were used to calculate the MACT floor emission limit for each pollutant instead of the average of the best-performing 12 percent of units. In summary, the approach ranks individual SSI units based on actual performance and establishes MACT floors based on the best-performing similar source for each pollutant and

subcategory, with an appropriate accounting of emissions variability. In other words, the UPL was determined for the data set of individual test runs for the single best-performing source for each regulated pollutant from each subcategory.

For the FB new source subcategory, we considered the best-performing FB incinerator to be the best-performing similar source. For the MH new source subcategory, we also considered the best-performing FB incinerator to be the best-performing similar source because these types of units are both operated for the same purpose (*e.g.* to incinerate sewage sludge and similar control technologies can be used on both). We chose not to treat the best-performing MH incinerator as the best-performing similar source for the MH new source subcategory because we are not aware of any new MH sources that have been constructed in the last 20 years. During that period, however, over 40 new FB incinerators have been installed, with at least 11 replacing MH incinerators. Information provided by the industry indicates that future units that will be constructed are likely to be FB incinerators. Information provided by the industry also indicates that new FB units have more efficient combustion characteristics resulting in lower emissions. Therefore, we believe it is appropriate to consider the best-performing FB incinerator as the best-performing similar source for the MH new source subcategory. We are aware that owners and operators with modified MH units may have concerns regarding meeting the new source limits. We request comment on this proposed approach. To assist commenters with their evaluation of the proposal, we have calculated what the MACT floor emission limits would be based on the best-performing MH incinerator, and the emission limits for FB and MH incinerators are shown in Table 3. These potential limits were developed by analyzing the MH test data using the same new source MACT floor methodology as discussed earlier in this section of this preamble. See the MACT floor memorandum in the docket for additional details.

TABLE 3—POTENTIAL EMISSION LIMITS FOR NEW MH UNITS BASED ON BEST-PERFORMING MH INCINERATOR

Pollutant	Units	Potential emission limit for new MH incinerators
Cd	mg/dscm @ 7% O_2	0.0011
CDD/CDF, TEQ	ng/dscm @ 7% O_2	0.0022
CDD/CDF, TMB	ng/dscm @ 7% O_2	0.024
CO	ppmvd @ 7% O_2	45
HCl	ppmvd @ 7% O_2	0.36
Hg[a]	mg/dscm @ 7% O_2	0.02
NO_X	ppmvd @ 7% O_2	150
Opacity	%	0
Pb	mg/dscm @ 7% O_2	0.0020
PM	mg/dscm @ 7% O_2	5.8
SO_2	ppmvd @ 7% O_2	6.9

[a] Calculation results in a limit of 0.069 which is greater than the existing source beyond the floor limit.

The MACT floor limits for opacity from combustion stacks were determined slightly differently from other pollutants. The opacity data available for FB and MH SSI units were obtained using EPA Method 9 at 40 CFR part 60, appendix A–4, for 3 FB incinerators (providing 10 observations or test runs) and 10 MH incinerators (providing 29 observations). Similar to the amount of data collected for other regulated pollutants, this constitutes less than 12 percent of the sources, but meets or exceeds the minimum sample size needed to characterize the population of the best-performing 12 percent of units. Under Method 9, the opacity of emissions from stationary sources is determined visually by a qualified observer. Opacity observations are recorded to the nearest 5 percent at 15-second intervals on an observational record sheet and the average opacity of the observation period is calculated. For FB incinerators, all of the available average opacity measurements were reported as 0 percent. Consequently, the MACT floor for opacity from existing FB incinerators and all new units is 0 percent opacity. For MH incinerators, 60 percent of the available average opacity measurements were greater than 0 percent and 40 percent were reported as 0 percent. A review of the opacity data for MH incinerators indicated that they are not normally distributed. However, because the MH opacity data contain zero values, the log-normal transformation of the data could not be calculated to normalize the data set. Consequently, the procedures used to assess the variability of the data were modified. For MH incinerators, the variability analysis for existing sources was conducted on the opacity data set without transforming the data using the log normal calculation. Additionally, because the opacity readings are in 5 percent increments, the calculated UPL was rounded up to the nearest multiple of 5. The analysis results in an opacity limit of 10 percent for existing sources. We request comment on the methodology used to set the opacity limit. We are also requesting additional opacity information from SSI units.

3. Incorporation of Non-Detect Data

Non-detect values comprise more than 50 percent of the emissions data for HCl from FB incinerators and CDD/CDF from both MH and FB incinerators. For these pollutants, EPA developed a methodology to account for the imprecision introduced by incorporating non-detect data into the MACT floor calculation.

At very low emission levels where emissions tests result in non-detect values, the inherent imprecision in the pollutant measurement method has a large influence on the reliability of the data underlying the MACT floor emission limit. Because of sample and emission matrix effects, laboratory techniques, sample size, and other factors, method detection levels normally vary from test to test for any specific test method and pollutant measurement. The confidence level that a value, measured at the detection level is greater than zero, is about 99 percent. The expected measurement imprecision for an emissions value occurring at or near the method detection level is about 40 to 50 percent. Pollutant measurement

imprecision decreases to a consistent level of 10 to 15 percent for values measured at a level about 3 times the method detection level.[14]

One approach that we believe can be applied to account for measurement variability in this situation starts with defining a method detection level that is representative of the data used in the data pool. The first step in this approach would be to identify the highest test-specific method detection level reported in a data set that is also equal to or less than the average emission calculated for the data set. This approach has the advantage of relying on the data collected to develop the MACT floor emission limit, while to some degree, minimizing the effect of a test(s) with an inordinately high method detection level (e.g., the sample volume was too small, the laboratory technique was insufficiently sensitive or the procedure for determining the detection level was other than that specified).

The second step is to determine the value equal to 3 times the representative method detection level and compare it to the calculated MACT floor emission limit. If 3 times the representative method detection level were less than the calculated MACT floor emission limit, we would conclude that measurement variability is adequately addressed, and we would not adjust the calculated MACT floor emission limit. If, on the other hand, the value equal to 3 times the representative method detection level were greater than the calculated MACT floor emission limit, we would conclude that the calculated MACT floor emission limit does not account entirely for measurement variability. We would, therefore, use the value equal to 3 times the method detection level in place of the calculated MACT floor emission limit to ensure that the MACT floor emission limit accounts for measurement variability and imprecision.

The approach discussed above was used to calculate the proposed MACT floor limit for HCl. The following additional procedures were followed for CDD/CDF, TMB, and TEQ basis limits. To calculate a TMB limit, all the 17 congeners of interest were identified and non-detect values that are associated with each were indicated. The mean of the non-detect values was calculated and multiplied by 17 (for the total number of congeners of interest). The mean value was then used as the detection limit of the run. Then, each data set was reviewed to identify the highest test-specific method detection level reported that was also equal to or less than the average emission level (*i.e.,* unadjusted for probability confidence level) calculated for the data set. The second step discussed above and also used for HCl was used to set the limit.

To calculate a limit on a TEQ basis, first, the mean of the non-detect values was calculated. Then the TEF for each congener was multiplied by the mean to determine the TEQ for each congener. Toxic Equivalencies for each congener were summed to calculate a TEQ sum value. The TEQ sum was then used as the detection limit for the test run. The second step discussed above and also used for HCl was used to set the limit.

4. EG MACT Floor

Once the sources that represent the best 12 percent of units were identified for each subcategory and pollutant, the individual test run data for these units were compiled and a statistical analysis was conducted to calculate the average and account for variability and, thereby, determine the MACT floor emission limit.

The summary results of the UPL analysis and the MACT floor emission limits for existing units are presented in Table 4 of this preamble for each subcategory and each pollutant.[15]

TABLE 4—SUMMARY OF MACT FLOOR EMISSION LIMITS FOR EXISTING SSI UNITS

Pollutant	Units	FB Incinerators			MH Incinerators		
		Avg of top 12%	99% of UPL	MACT floor emission limit[a]	Avg of top 12%	99% of UPL	MACT floor emission limit[a]
Cd	mg/dscm@7% O_2	0.00055	0.00189	0.0019	0.030	0.0947	0.095
CDD/CDF TEQ	ng/dscm@7% O_2	0.027	0.0559	0.056	0.047	0.314	0.32
CDD/CDF TMB	ng/dscm@7% O_2	0.32	0.602	0.61	0.69	4.95	5.0
CO	ppmvd@7% O_2	28	55.1	56	1,013	3,885	3,900
HCl	ppmvd@7% O_2	0.17	0.489	0.49	0.53	0.982	1.0
Hg	mg/dscm@7% O_2	0.0019	0.00325	0.0033	0.10	0.162	0.17
NO_X	ppmvd@7% O_2	30	62.4	63	130	207	210
Opacity	%	0	0	0	2.0	6.4	10
Pb	mg/dscm@7% O_2	0.0030	0.0098	0.0098	0.082	0.295	0.30
PM	mg/dscm@7% O_2	2.6	11.9	12	42.6	79.8	80
SO_2	ppmvd@7% O_2	3.3	21.5	22	9.4	25.7	26

[a] Limits were rounded up to 2 significant figures except that opacity limits were rounded up to the nearest multiple of 5 for reasons explained in section IV.C.2 of this preamble.

Information gathered indicates that all of the units have some level of air pollution control and management practice in place either as a result of CWA part 503, State and local requirements, or previous Federal standards to address air emissions. MACT floor emissions reductions were calculated assuming that units needing to meet the limits for Cd and Pb would install a FF, units needing to meet the limits for Hg and CDD/CDF would apply activated carbon injection, and units needing to meet the limits for HCl and SO_2 would apply a packed bed scrubber. We are requesting comment on whether there are space constraints at wastewater treatment facilities that would affect the feasibility and cost of installing air pollution control devices. The results of the analysis indicate that all existing FB and MH units would meet the MACT floor levels of control for NO_X, CO, and PM without applying any additional control. (However, PM would be reduced from applying controls to meet the Cd and Pb emissions limits.) Additionally, all existing MH units would also meet the MACT floor levels of control for CDD/

[14] American Society of Mechanical Engineers, *Reference Method Accuracy and Precision (ReMAP): Phase 1, Precision of Manual Stack Emission Measurements,* CRTD Vol. 60, February 2001.

[15] EPA interprets CAA section 129 as supporting the pollutant-by-pollutant approach (74 FR 51380, Oct. 6, 2009).

CDF without applying any additional control. These results for NO_X, CO, PM, and CDD/CDF are attributable to the relatively high 99 percent UPL values computed from the submitted data. The small sample sizes and the high degree of variability observed in the data for these pollutants resulted in large 99 percent UPL values.

Given the smaller than desired data sets for these pollutants, we computed the 95 percent UPL values to account for the influence of the limited data set. The results are presented in Table 5 of this preamble. We are requesting comment on whether it is appropriate to use these alternative UPLs for this source category due to the limited availability of data.

TABLE 5—SUMMARY OF MACT FLOOR EMISSION LIMITS FOR EXISTING SSI UNITS USING ALTERNATIVE PERCENT UPL [a]

Pollutant	Units	FB Incinerators	MH Incinerators
		95% Of UPL	95% Of UPL
Cd	mg/dscm@7% O_2	0.0011	0.048
CDD/CDF TEQ	ng/dscm@7% O_2	0.046	0.12
CDD/CDF TMB	ng/dscm@7% O_2	0.51	1.8
CO	ppmvd@7% O_2	47	2,200
HCl	ppmvd@7% O_2	[b] 0.49	0.84
Hg	mg/dscm@7% O_2	0.0018	0.14
NO_X	ppmvd@7% O_2	48	190
Opacity	%	0	10
Pb	mg/dscm@7% O_2	0.0052	0.14
PM	mg/dscm@7% O_2	6.1	69
SO_2	ppmvd@7% O_2	8.6	17

[a] Limits were rounded up to 2 significant figures except that opacity limits were rounded up to the nearest multiple of 5 for reasons explained in section IV.C.2 of this preamble.

[b] Value shown is the result of the non-detect analysis, which results in using the limit that is based on 3 times the highest detection limit that is less than the average of the data. The calculated UPL values without the non-detect analysis are 0.25, 0.23, and 0.22 for percent UPLs of 95 percent, 90 percent, and 85 percent, respectively.

5. NSPS MACT Floor

New source MACT floors are based on the best-performing single source for each regulated pollutant, with an appropriate accounting for emissions variability. In other words, the best-performing unit was identified by ranking the units from lowest to highest for each subcategory and pollutant and selecting the unit with the lowest 3-run test average emissions test data for each pollutant. To determine the MACT floor for new sources, an UPL calculation similar to that for existing sources was conducted, except the best-performing unit's data within a subcategory were used to calculate the MACT floor emission limit for each pollutant. The best-performing unit was identified as the lowest emitting source with at least 3 test runs. In summary, the approach ranks individual SSI units based on actual performance and establishes MACT floors based on the best-performing source for each pollutant and subcategory, with an appropriate accounting of emissions variability. In other words, the UPL was determined for the data set of individual test runs for the single best-performing source for each regulated pollutant from each subcategory. As discussed in IV.C.2, EPA is proposing 2 subcategories for new sources. However, we are proposing to require that all new sources meet the emission limits for the best-performing FB incinerator. Table 6 of this preamble presents the analysis summaries and the new source MACT floor limits.

TABLE 6—SUMMARY OF MACT FLOOR EMISSION LIMITS FOR ALL NEW SSI UNITS (FB AND MH)

Pollutant	Units	All new SSI units (fluidized bed and multiple hearth)		
		Avg of top 12%	99% of UPL	MACT floor limit [1]
Cd	mg/dscm@7% O_2	0.00017	0.000510	0.00051
CDD/CDF TEQ	ng/dscm@7% O_2	0.00094	0.00213	0.0022
CDD/CDF TMB	ng/dscm@7% O_2	0.0095	0.0226	0.024
CO	ppmvd@7% O_2	2.6	7.31	7.4
HCl	ppmvd@7% O_2	0.044	0.111	0.12
Hg	mg/dscm@7% O_2	0.00036	0.000992	0.0010
NO_X	ppmvd@7% O_2	14.9	25.3	26
Opacity	%	0	0	0
Pb	mg/dscm@7% O_2	0.00031	0.000527	0.00053
PM	mg/dscm@7% O_2	1.4	4.06	4.1
SO_2	ppmvd@7% O_2	0.62	1.99	2.0

[1] Limits were rounded up to 2 significant figures.

6. Assessment of $PM_{2.5}$ Data

EPA's collection of emissions information also included filterable $PM_{2.5}$ measured using OTM 27 and condensable PM measured using OTM 28. Other Test Method 27 and OTM 28 are equivalent to the proposed revisions of Methods 201A and 202. Emissions information for $PM_{2.5}$ and condensable PM was obtained from 5 FB incinerators and 6 MH incinerators. Other Test Method 27/OTM 28 combination testing can be used to determine primary $PM_{2.5}$, which includes filterable PM from OTM 27 and condensibles from OTM 28. A

variability analysis was conducted on the data to calculate a MACT floor level of control, and the results are provided in Table 7 of this preamble.

TABLE 7—VARIABILITY CALCULATION FOR $PM_{2.5}$

[Mg/Dscm@7%O_2]

Subcategory	Avg of top 12%	99% of UPL	Limit
Existing FB Incinerators	4.2	11.7	12
Existing MH Incinerators	17	57.6	58
All New Units	1.5	2.29	2.3
Potential New MH Incinerators (See Discussion In IV.C.2)	2.6	10.7	11

There are potential concerns with the emissions data and whether it is appropriate to set $PM_{2.5}$ standards for SSI units. Other Test Method 27 is not an appropriate test method for sizing particulate at 2.5 μm when there are entrained water droplets in the stack gas, which will bias the measurements. All SSI units use wet scrubbers to control emissions, and water droplet entrainment may be an issue at some portion of these sources, resulting in them not being able to measure $PM_{2.5}$ using OTM 27. A review of the temperature and moisture data collected during the $PM_{2.5}$ emissions tests indicates that water droplet entrainment is not an issue with the emissions data collected from the sources tested. Other test reports, at sources with stack gas moisture levels in excess of the vapor capacity, and thus with entrained water droplets, did not provide $PM_{2.5}$ information. Additional information on the emission characteristics would be necessary to make a conclusion about general stack gas parameters in the SSI source category.

Because of this concern, we decided not to include $PM_{2.5}$ standards in this proposal. We are requesting comment on whether the $PM_{2.5}$ limits in Table 6 of this preamble should be set for the promulgated rule, and whether the combination of OTM 27 and 28 are appropriate measurement techniques. We are also requesting additional $PM_{2.5}$ emissions stack test data and supporting documentation for both MH and FB incinerators.

D. Rationale for Beyond-the-Floor Alternatives

As discussed above, EPA may adopt emission limitations and requirements that are more stringent than the MACT floor (*i.e.,* beyond-the-floor). Unlike the MACT floor methodology, EPA must consider costs, nonair quality health and environmental impacts and energy requirements when considering beyond-the-floor standards.

1. Beyond-the-Floor-Analysis for Existing Sources

In order to identify beyond-the-floor options, we first identified control requirements for each pollutant that would be more stringent than required to meet the MACT floor level of control and determined whether they were technically feasible. If the more stringent controls were technically feasible, a cost and emission impacts analysis was conducted for applying them. The cost, emission reduction, and cost-effectiveness of the technically feasible controls were reviewed, and controls that were relatively cost-effective in reducing emissions were selected as possible beyond-the-floor control options.

The control technologies that would be needed to achieve the MACT floor levels (*i.e.,* FF and packed bed scrubbers) are generally the most effective controls available for reducing PM, Cd, Pb, HCl and SO_2. Therefore, no beyond-the-floor technologies were identified for these pollutants. We analyzed options of applying FF and packed bed scrubbers to units that did not have these controls already or did not need them to meet the MACT floor emissions limits. A preliminary cost and emission reduction analysis was performed for these options. The results indicate that the application of FF (to control Cd and Pb), or application of a packed bed scrubber (to control HCl and SO_2), as a beyond-the-floor option results in high costs for the emission reduction achieved, and is not cost-effective. Consequently, the FF and packed bed beyond-the-floor options were not further analyzed. This analysis is documented in the memorandum "Analysis of Beyond the Maximum Achievable Control Technology (MACT) Floor Controls for Existing SSI Units" found in the SSI docket. We identified and analyzed impacts of beyond-the-floor technologies for the other pollutants (CO, NO_X, Hg, and CDD/CDF). These analyses are summarized in the following paragraphs.

As discussed in section IV.C.4 of this preamble, our analysis indicates that all existing FB and MH units would meet the MACT floor levels of control for NO_X and CO without applying any additional control; therefore, no control technologies were costed for these pollutants at the MACT floor level. For the beyond-the-floor analysis, we analyzed applicable controls, as discussed below, to provide reductions of NO_X and CO from all SSI units.

For NO_X, we reviewed add-on control technologies that achieve NO_X reduction at other combustion sources, such as MWC units, CISWI units, and boilers. These include SCR, SNCR, and FGR. However, none of these technologies were determined to be appropriate for SSI units. To our knowledge, SSI units do not use SCR or SNCR. Additionally, we are not aware of any successful applications of SCR technology to waste combustion units. This may be due to the difficulties operating SCR where there is significant PM or sulfur loading in the gas stream. Application of SNCR also may not be technically feasible because the combustion mechanism of MH incinerators provides inadequate mixing of combustion gas and SNCR reagent. Additionally, SSI operating conditions (*e.g.,* low temperatures and residence times for MH incinerators and low uncontrolled NO_X emissions for FB incinerators) are not well suited for application of SNCR. Flue gas recirculation has been used on combustion devices to reduce NO_X emissions. Emissions information collected by EPA contains data from one MH incinerator with FGR. However, its emission levels are similar to units without FGR. Therefore, no conclusion could be made on FGR performance. Additionally, there are no FB incinerators that currently use any add-on NO_X control because, due to their design, FB incinerators achieve low NO_X emission levels without add-on controls.

With regard to Hg and CDD/CDF, the most effective control technology to reduce these emissions is activated

carbon injection. We estimate that this source category is currently the sixth highest Hg emitting source category in the United States, emitting about 3.1 TPY of Hg (or about 3 percent of the total Hg emissions from anthropogenic sources in the United States). This category emits about 0.0001 TPY of dioxin (or 0.0000081 tons of dioxin TEQ), which is about 1 percent of the total estimated dioxin emissions in the U.S.

Our analysis indicates that 53 SSI units would need to use activated carbon injection to meet the MACT floor level of control, so costs for activated carbon injection were included in the cost analysis for the MACT floor for such units. All of these units, except for two, are FB units. Control of the FB units at the MACT floor will result in estimated emissions reductions of about 0.06 tons of Hg and 0.0000065 tons dioxins TEQ. However, the other units (especially the MH units) would not need additional control to meet the "floor" level of control. Additional beyond-the-floor reductions for the MH units would be achieved by applying activated carbon injection. Data gathered by EPA indicate that activated carbon injection applied to combustion sources with particulate control can achieve 85–95 percent reduction of Hg, depending on the type of particulate control, with higher reductions achieved by units with FF and lower reductions achieved by units with electrostatic precipitators or venturi scrubbers. Based on these data, a beyond-the-floor reduction of 88 percent for Hg was used for carbon injection applied to existing MH unit controls, resulting in an emission level of 0.02 mg/dscm corrected to 7 percent oxygen. Previous EPA studies also show that CDD/CDF can be reduced by as much as 98 percent using activated carbon injection.

For CO, the MACT floor emission level for existing MH sources is 3,900 ppmvd corrected to 7 percent oxygen. An add-on combustion device, such as an afterburner, was analyzed as a more stringent control device that could be applied. Some units may use a RTO to comply with the CWA "503 Rule" (40 CFR part 503). We request comment on the use of an afterburner or RTO as a means to control CO from MH SSI units. Carbon monoxide emissions data collected show that MH incinerators using an add-on afterburner or RTO can achieve CO emission levels less than 100 ppmv. The CWA part 503 Rule limits SSI to 100 ppmv THC as propane, dry basis, corrected to 7 percent oxygen, averaged for 30 days. The CWA part 503 Rule allows substitution of 100 ppmv CO dry basis, corrected to 7 percent oxygen for the THC originally required. The 100 ppm CO level was selected because this level was determined to be a level that would be indicative of THC concentrations below 100 ppmv. This allows the use of a lower cost, easier to maintain CO monitor in place of the difficult to keep on-line THC monitor. Consistent with the CWA part 503 regulations for disposal of sewage sludge, for the beyond-the-floor analysis, a value of 100 ppmv was used as the emission level that a MH incinerator with an afterburner could achieve. Although we do not have data to quantify the impacts, the afterburner is also expected to reduce emissions of organic compounds, such as 7–PAH. We also evaluated whether there were any beyond-the-floor options for CO for existing FB incinerators. The proposed SSI MACT floor CO level for existing FB incinerators (56 ppmv) is well below the 100 ppmv emission level of the CWA part 503 Rule. We determined that application of an afterburner to FB units would not achieve appreciable CO reduction from the proposed limit for the cost incurred. This analysis is documented in the memorandum "Analysis of Beyond the Maximum Achievable Control Technology (MACT) Floor Controls for Existing SSI Units." Therefore, no beyond-the-floor CO limit was analyzed for the FB subcategory.

Table 8 of this preamble summarizes the costs of the MACT floor emission level (referred to as option 1), and 2 beyond-the-floor options. Option 2 is the same as option 1 plus application of activated carbon injection with existing particulate control to reduce Hg emissions. Option 3 is the same as option 2 plus applying an afterburner to MH units to reduce CO emissions.

TABLE 8—COSTS EXPECTED FOR EXISTING SSI UNITS TO COMPLY WITH MACT CONTROL OPTIONS (2008$)

Option	Total capital costs ($)	Total annualized costs ($/Yr)[a]
1—MACT Floor	220,000,000	73,000,000
2—Option 1 + Activated carbon injection	225,000,000	105,000,000
3—Option 2 + CO Afterburner	370,000,000	148,000,000

[a] Calculated using a 7 percent discount factor.

Table 9 of this preamble summarizes the emission reductions of each pollutant for the MACT control options.

TABLE 9—SUMMARY OF EMISSION REDUCTIONS FOR EXISTING UNITS TO COMPLY WITH THE MACT CONTROL OPTIONS SOURCES

Pollutant	Emission reductions for each MACT option (TPY)		
	Option 1	Option 2	Option 3
Cd	1.41	1.41	1.41
CDD/CDF TEQ	0.0000065	0.0000078	0.0000078
CDD/CDF TMB	0.000079	0.000099	0.000099
CO	0	0	25,691
HCl	93	93	93
Hg	0.09	2.71	2.71
NO_X	4.3	4.3	4.3
Pb	2.63	2.63	2.63

TABLE 9—SUMMARY OF EMISSION REDUCTIONS FOR EXISTING UNITS TO COMPLY WITH THE MACT CONTROL OPTIONS SOURCES—Continued

Pollutant	Emission reductions for each MACT option (TPY)		
	Option 1	Option 2	Option 3
PM	318	318	318
SO_2	2,192	2,192	2,192

The results provided in Tables 8 and 9 of this preamble were calculated using data gathered for each source, as well as default emissions, sludge capacity, and vent gas flow rate information for sources where data were unavailable. We estimate that applying activated carbon injection to all MH units to control Hg and CDD/CDF would result in total annualized costs of $32 million dollars (using a discount rate of 7 percent) and would achieve Hg reductions of 2.62 TPY and CDD/CDF reductions of 0.000020 TPY. The incremental cost-effectiveness of adding activated carbon injection to all MH units is estimated to be $12 million per ton of pollutants (Hg and CDD/CDF) removed (or $6,000 per pound). More than 99.9 percent of these estimated reductions are for Hg, thus these cost estimates mainly reflect the costs of Hg removal (i.e., about $6,000 per pound of Hg removed). However, it is important to note that activated carbon injection cannot be applied alone. It requires particulate control devices to remove the carbon that is injected to adsorb the Hg. Based on our available data, all of these units have some type of PM control device in place so they would not need to install new PM control equipment. We believe this beyond-the-floor option is cost-effective for Hg, which is a persistent bio-accumulative toxic (PBT) pollutant. Thus, we are proposing this beyond-the-floor limit for Hg of 0.02 mg/dscm corrected to 7 percent oxygen. Because more than 99.9 percent of the emissions reduction is associated with Hg, a specific beyond-the-floor option of controlling CDD/CDF emissions using activated carbon injection was not further considered. However, co-control of CDD/CDF would occur from the option of applying activated carbon injection to meet the beyond-the-floor emission limit for Hg.

Information collected by EPA shows that several FB units, but no MH units, currently use activated carbon injection. We believe activated carbon injection is applicable to both types of SSI combustors and do not know of any technical reason that activated carbon injection could not be applied to reduce Hg emissions at MH units. We are requesting comment and additional information on the feasibility of using this technology on MH units.

Thus, given the factors discussed above, we are proposing limits for Hg based on the beyond-the-floor option described above. However, we are requesting comment on this approach and the beyond-the-floor limits for Hg at MH units and request information on other factors and any data available that we should consider in our final rulemaking.

We also considered whether we should set beyond-the-floor emission limits for CO. The emissions reductions and cost associated with this are referred to as option 3 in Tables 8 and 9 of this preamble. We estimate that to apply MACT control option 3, which would require either the use of an afterburner or thermal oxidizer, could require as much as 1,700 million cubic feet of natural gas a year to be burned, resulting in NO_X and CO emissions of 84 and 70 TPY, respectively. Therefore, given these factors, we are not recommending going beyond-the-floor with option 3. We are requesting comment on whether to require MH units to meet the 100 ppmv CO limit, considering the potential emissions of NO_X and the cost impacts on municipalities of applying this option.

The results of the beyond-the-floor analysis are documented in the memorandum "Analysis of Beyond the Maximum Achievable Control Technology (MACT) Floor Controls for Existing SSI Units" found in the SSI docket (EPA–HQ–OAR–2009–0559). Table 1 in this preamble summarizes the proposed emissions limits for existing SSI units.

2. Beyond-the-Floor Analysis for New Sources

We did not identify any technologies or methods to achieve emission limits more stringent than the MACT floor limits for new units based on the lowest emitting FB incinerators. The control technologies necessary to achieve the MACT floor levels are generally the most effective controls available: FF for PM, Cd and Pb control; packed bed scrubbers for SO_2 and HCl control; afterburners for CO control; and activated carbon injection for CDD/CDF and Hg control. In addition, incremental additions of activated carbon have not been proven to achieve further reductions above the projected flue gas concentration estimated to achieve the limits for new sources. Data gathered do not indicate that any FB incinerators operate NO_X controls, such as SNCR, SCR, or FGR because the NO_X emissions are already low. In light of the technical feasibility, costs, energy, and nonair quality health and environmental impacts discussed in this section, we have determined it is not reasonable to establish beyond-the-floor limits for existing and new SSI units. Table 2 in this preamble summarizes the proposed emissions limits for new SSI units.

E. Rationale for Performance Testing and Monitoring Requirements

We are proposing that all new and existing SSI units meet the following requirements:

- Initial and annual emissions performance tests (or continuous emissions monitoring as an alternative).
- Annual inspections of scrubbers, FF, and other air pollution control devices that may be used to meet the emission limits.
- Annual visual emissions test of ash handling procedures.
- Control device parameter monitoring for wet scrubbers, FF, ESP, activated carbon injection, and afterburners, and other approved control devices.
- Monitoring of bypass stack use if installed at an affected unit.
- Periodic performance evaluations of continuous monitoring systems.

These proposed requirements were selected to provide additional assurance that sources continue to operate at the levels established during their initial performance test. The visual emissions test of ash handling procedures and annual control device inspections have been adopted for HMIWI, another CAA section 129 source category. Hospital, Medical, and Infectious Waste Incineration standards (74 FR 51367) contain these requirements to ensure that the ash which may contain metals, is not emitted to the atmosphere through fugitive emissions and that control devices are maintained properly.

The large and small MWC standards also have similar fugitive ash monitoring requirements. In addition, the CISWI rule requires a Method 22 (of appendix A–7) visible emissions test of the ash handling operations to be conducted during the annual compliance test for all subcategories except waste-burning kilns, which do not have ash handling systems. We propose to require the fugitive ash monitoring provisions that are contained in the HMIWI, CISWI, and MWC rules. The HMIWI, CISWI, and MWC units are incineration devices combusting waste and have ash handling similar to SSI units. Consequently, we believe that the requirements for fugitive ash handling in the HMIWI and MWC standards can be applied to SSI units. We request comment on whether the ash handling requirements for MWC and HMIWI are appropriate for SSI, and if not, what requirements should be imposed.

The proposed rules would allow sources to use the results of emissions tests conducted within the previous 2 years to demonstrate initial compliance with the proposed emission limits for all the CAA section 129 pollutants as long as the sources certify that the previous test results are representative of current operations. Such tests must have been conducted using the test methods specified in the SSI rules and must be the most recent tests performed on the unit. Those sources, whose previous emissions tests do not demonstrate compliance with 1 or more of the revised emission limits, would be required to conduct another emissions test for those pollutants. This allowance to use previous tests would minimize the burden to affected sources. Information collected by EPA shows tests have been conducted on SSI for Title V, State testing requirements, and OW 503 rule requirements for many of the CAA section 129 pollutants. We seek comment on the appropriateness of the use of previously-conducted performance tests.

The proposed rule also would allow for reduced testing of PM, Cd, Pb, Hg, SO_2, HCl, NO_X and CO (for existing sources only). We are proposing to allow facilities with test data for listed pollutants that show emissions are less than 75 percent of the applicable emission limits to be able to qualify for testing for these pollutants once every 3 years. The reduced testing allowance and compliance margin provides flexibility and incentive to sources that operate well within the emission standard, and timelier follow-through on assuring that sources that are marginally in compliance will remain in compliance.

The proposed rule would allow for the following optional CEMS use: CO CEMS for existing sources; and NO_X CEMS, SO_2 CEMS, PM CEMS, HCl CEMS, multi-metals CEMS, Hg CEMS, CDD/CDF CEMS, ISTMMS and ISTDMS for existing and new sources and COMS. Some existing SSI units may have CO CEMS, NO_X CEMS, or SO_2 CEMS already to meet other regulatory or permit requirements, and we propose to allow them to continue to use these monitors to demonstrate continuous compliance with the SSI standards. The optional use of HCl CEMS, multi-metals CEMS, CDD/CDF CEMS, ISTMMS, and ISTDMS would be available on the date a final PS for these monitoring systems is published in the **Federal Register**. The proposed monitoring provisions are discussed in more detail below.

Monitoring Provisions for All Control Devices. The proposed rules would require monitoring the dry sludge feed rate, combustion chamber temperature (or afterburner temperature), and sludge moisture content to ensure that the incinerator operation parameters measured during the compliance test are continually maintained.

Monitoring Provisions for Wet Scrubbers. The proposed rules would require monitoring the scrubber liquor flow rate and pH, and the minimum pressure drop across each scrubber (or amperage to each scrubber), to ensure that the scrubber operation parameters measured during the compliance test are continually maintained.

Monitoring Provisions for Activated Carbon Injection (Hg sorbent injection). The proposed rules would require monitoring of activated carbon (*i.e.,* Hg sorbent) injection rate and carrier gas flow rate (or carrier gas pressure drop) to ensure that the minimum sorbent injection rate, measured during the compliance test, is continually maintained.

Monitoring Provisions for FF. The proposed rules would require bag leak detection system monitoring to ensure that the FF is operating properly and that leaks in the filter media are quickly identified and corrected on a continuous basis.

Monitoring Provisions for Electrostatic Precipitators. The proposed rules would require monitoring of the secondary voltage and secondary amperage of the collection plates, calculating the secondary power input to the collection plates (voltage multiplied by amperage) per ESP section, and effluent water flow rate at the outlet of the ESP (for wet ESP) to ensure that the ESP operating parameters measured during the compliance test are maintained on a continuous basis.

Monitoring Provisions for Afterburners. The proposed rules would require monitoring of the temperature of afterburners.*CO CEMS.* The proposed rules would require the use of CO CEMS on new SSI units. The proposed rules would allow the use of CO CEMS on existing sources. Owners and operators that use CO CEMS would be able to discontinue their annual CO compliance test. The continuous monitoring of CO emissions is an effective way of ensuring that the combustion unit is operating properly. The proposed rules incorporate the use of PS–4B Specifications and Test Procedures for Carbon Monoxide and Oxygen Continuous Monitoring Systems in Stationary Sources) of appendix B of 40 CFR part 60.

The proposed CO emission limits are based on data from annual stack tests and compliance would be demonstrated by stack tests. The change to use continuously-operated CO CEMS for measurement and enforcement of the stack test-based emission limits must be carefully considered in relation to an appropriate averaging period for data reduction. In past EPA rulemakings for incineration units, EPA has selected averaging times between 4 hours and 24 hours based on statistical analysis of long-term CEMS data for a particular subcategory. Because CO CEMS data available for SSI to perform such an analysis are insufficient to determine an emission level that would correspond to a shorter averaging period, EPA is proposing the use of a 24-hour block average as appropriate to address potential changes in CO emissions. The 24-hour block average would be calculated using Equation 19–19 in section 12.4.1 of EPA Method 19 of appendix A–7 of 40 CFR part 60. Existing facilities electing to use CO CEMS as an optional method would be required to notify EPA 1 month before starting use of CO CEMS and 1 month before stopping use of the CO CEMS. In addition, EPA specifically requests comment on whether continuous monitoring of CO emissions should be required for all existing SSI.

PM CEMS. The proposed rules would allow the use of PM CEMS as an alternative testing and monitoring method. Owners or operators who choose to rely on PM CEMS would be able to discontinue their annual PM compliance test. In addition, because units that demonstrate compliance with the PM emission limits with a PM CEMS would also be meeting the opacity standard, compliance demonstration with PM CEMS would be

considered a substitute for opacity testing or opacity monitoring. Owners and operators who use PM CEMS also would be able to discontinue their monitoring of ESP and scrubbers used to comply with the PM emission limit for the following operating parameters: Wet scrubber pressure drop, scrubber liquor flow rate, scrubber liquor pH, secondary voltage of ESP collection plates, secondary amperage of ESP collection plates, effluent water flow rate at the outlet of the ESP, and opacity monitoring or testing to demonstrate continuous compliance with the opacity limits. These operating parameters may still need to be monitored to demonstrate compliance for other pollutants (*e.g.,* HCl). These parameter monitoring requirements were designed to ensure the scrubber continues to operate in a manner that reduces PM emissions and would not be necessary if PM is directly measured on a continuous basis. The proposed amendments incorporate the use of PS–11 (Specifications and Test Procedures for Particulate Matter Continuous Emissions Monitoring Systems at Stationary Sources) of appendix B of 40 CFR part 60 for PM CEMS and PS–11 QA Procedure 2 to ensure that PM CEMS are installed and operated properly and produce good quality monitoring data.

The proposed PM emission limits are based on data from (normally distributed or transferred to be normally distributed) annual stack tests and compliance would generally be demonstrated by stack tests. The use of PM CEMS for measurement and enforcement of the same stack test-based emission limits must be carefully considered in relation to an appropriate averaging period for data reduction. Because PM CEMS data are unavailable for SSI, EPA is proposing that the use of a 24-hour block average is appropriate to address potential changes in PM emissions that cannot be accounted for with short term stack test data. The 24-hour block average would be calculated using Equation 19–19 in section 12.4.1 of EPA Method 19 of appendix A–7 of 40 CFR part 60. An owner or operator of a SSI unit who wishes to use PM CEMS would be required to notify EPA 1 month before starting use of PM CEMS and 1 month before stopping use of the PM CEMS.

Other CEMS and Monitoring Systems. EPA also is proposing the optional use of NO_X CEMS, SO_2 CEMS, HCl CEMS, multi-metals CEMS, Hg CEMS, CDD/CDF CEMS, ISTMMS, and ISTDMS as alternatives to the existing monitoring methods for demonstrating compliance with the NO_X, SO_2, HCl, Pb, Cd and Hg, and CDD/CDF emission limits. Because CEMS data for SSI are unavailable for all subcategories for NO_X, SO_2, HCl and metals, EPA concluded that the use of a 24-hour block average was appropriate to address potential changes in emissions of NO_X, SO_2, HCl and metals that cannot be accounted for with short term stack test data. EPA has concluded that the use of 24-hour block averages would be appropriate to address emissions variability, and EPA has included the use of 24-hour block averages in the proposed rule. The 24-hour block averages would be calculated using Equation 19–19 in section 12.4.1 of EPA Method 19 of appendix A of 40 CFR part 60. The proposed amendments incorporate the use of PS–2 of appendix B of 40 CFR part 60 for NO_X and SO_2 CEMS. Although final PS are not yet available for HCl CEMS and multi-metals CEMS, EPA is considering development of PS. The proposed rule specifies that these options would be available to a facility on the date a final PS is published in the **Federal Register**.

The use of HCl CEMS would allow the discontinuation of monitoring of the following operating parameters associated with scrubbers used to comply with the HCl emission limits: scrubber liquor flow rate, scrubber liquor pH, pressure drop across the scrubber (or amperage to the scrubber), and the annual testing requirements for HCl. However, some of these monitoring parameters may still be necessary to demonstrate compliance with other pollutant emission limits. These parameter monitoring requirements were designed to ensure the scrubber continues to operate in a manner that reduces HCl emissions and would not be necessary if HCl emissions are directly measured on a continuous basis. EPA has proposed PS–13 (Specifications and Test Procedures for Hydrochloric Acid Continuous Monitoring Systems in Stationary Sources) of appendix B of 40 CFR part 60 and expects that PS–13 can serve as the basis for HCl CEMS use at SSI. The procedures used in proposed PS–13 for the initial accuracy determination use the relative accuracy test, a comparison against a reference method. EPA is taking comment on an alternate initial accuracy determination procedure, similar to the one in section 11 of PS–15 (Performance Specification for Extractive FTIR Continuous Emissions Monitor Systems in Stationary Sources) of appendix B of 40 CFR part 60 using the dynamic or analyte spiking procedure.

EPA believes multi-metals CEMS can be used in many applications, including SSI. EPA has monitored side-by-side evaluations of multi-metals CEMS with EPA Method 29 of appendix A–8 of 40 CFR part 60 at industrial waste incinerators and found good correlation. EPA also approved the use of multi-metals CEMS as an alternative monitoring method at hazardous waste combustors. EPA believes that proposed PS–10 (Specifications and Test Procedures for Multi-metals Continuous Monitoring Systems in Stationary Sources) of appendix B of 40 CFR part 60 or other EPA PS to allow the use of multi-metals CEMS at SSI is an appropriate alternative. We request comment on the appropriateness of using multi-metals CEMS as a substitute for Cd and Pb performance testing. The procedures used in proposed PS–10 for the initial accuracy determination use the relative accuracy test, a comparison against a reference method. EPA is taking comment on an alternate initial accuracy determination procedure, similar to the one in section 11 of PS–15 using the dynamic or analyte spiking procedure.

EPA proposes the optional use of Hg CEMS (Performance Specification 12A—Specifications and Test Procedures for Total Vapor Phase Mercury Continuous Emissions Monitoring Systems in Stationary Sources) or ISTMMS (Performance Specification 12B—Specifications and Test Procedures for Total Vapor Phase Mercury Continuous Emissions Monitoring Systems from Stationary Sources Using a Sorbent Trap Monitoring System or Appendix K of part 75).[16] An owner or operator of a SSI unit who wishes to use any CEMS or CASS would be required to notify EPA 1 month before starting use of the CEMS or CASS and 1 month before stopping use of the CEMS or CASS. The source would also have to perform the annual performance test within 60 days of ceasing to use the CEMS or CASS for compliance with the standard. Mercury sorbent flow rate and carrier gas flow rate (or carrier gas pressure drop) monitoring could be eliminated in favor of a multi-metals CEMS or Hg CEMS; however CDD/CDF sorbent flow rate and carrier gas monitoring would still be required as an indicator of CDD/CDF

[16] EPA originally added PS–12A and PS–12B to Part 75 as part of the Clean Air Mercury Rule (CAMR). The United States Court of Appeals for the District of Columbia Circuit vacated CAMR on grounds unrelated to the PS. *New Jersey* v. *EPA;* 517 F.3d 574 (DC Cir. 2008). The Court's decision did not, in any way, address the appropriateness of the procedures set forth in Appendix K. In 2009, as part of the Portland Cement MACT, EPA proposed amending part 75 to add PS–12A and PS–12B. EPA currently intends to finalize those specifications at the same time it takes final action on the Portland cement MACT rule.

control if ISTDMS or CDD/CDF CEMS are not used.

The ISTMMS would entail use of a CASS with analysis of the samples at set intervals using any suitable determinative technique that can meet appropriate criteria. The option to use a CASS would take effect on the date a final PS is published in the **Federal Register**. As with Hg and multi-metal CEMS, use of integrated sorbent trap monitoring would eliminate the requirement to monitor Hg sorbent injection rate but would not eliminate the requirement to monitor CDD/CDF sorbent injection rate because it also is an indicator of CDD/CDF control.

The ISTDMS would entail use of a CASS and analysis of the sample according to EPA Reference Method 23 of appendix A–7 of 40 CFR part 60. The option to use a CASS would take effect on the date a final PS is published in the **Federal Register**. Dioxin/furan sorbent injection rate and carrier gas flow rate (or carrier gas pressure drop) monitoring and CDD/CDF annual testing could be eliminated in favor of ISTDMS, but Hg sorbent injection rate monitoring would not be eliminated because it also is an indicator of Hg control.

If integrated sorbent trap monitoring of CDD/CDF as well as multi-metals CEMS, Hg CEMS, or ISTMMS are used, both Hg sorbent injection rate monitoring and CDD/CDF sorbent injection rate monitoring could be eliminated. These parameter monitoring requirements were designed to ensure that control devices continue to be operated in a manner to reduce CDD/CDF, metals and Hg emissions, and corresponding monitoring is not needed if all of these pollutants are directly measured on an ongoing basis. EPA requests comment on other parameter monitoring requirements that could be eliminated upon use of any or all of the optional CEMS and CASS discussed above. Table 10 of this preamble presents a summary of the SSI operating parameters, the pollutants influenced by each parameter and alternative monitoring options for each parameter.

TABLE 10—SUMMARY OF SSI OPERATING PARAMETERS AND CONTROL DEVICE INSPECTIONS, POLLUTANTS INFLUENCED BY EACH PARAMETER AND ALTERNATIVE MONITORING OPTIONS FOR EACH PARAMETER

Operating parameter (control device type associated with monitoring requirement)	Pollutants influenced by operating parameter/control device	Alternative monitoring options
Sludge feed rate (All)	All	None.
Sludge moisture level (All)	All	None.
Temperature of combustion chamber (or afterburner combustion chamber) (All).	All	None.
CDD/CDF sorbent flow rate (Activated carbon injection) Carrier gas flow rate or carrier gas pressure drop (Activated carbon injection using CDD/CDF sorbent).	CDD/CDF	ISTDMS or CDD/CDF CEMS.
Hg sorbent flow rate (Activated carbon injection) Carrier gas flow rate or carrier gas pressure drop (Activated carbon injection using Hg sorbent).	Hg	ISTMMS, Hg CEMS, or multi-metals CEMS.
Scrubber pressure drop from each scrubber (Wet scrubber)	PM, Cd, Pb	PM CEMS, Pb CEMS, or Cd CEMS.
Scrubber liquor flow rate from each scrubber (Wet scrubber)	PM, Cd, Pb	PM CEMS, multi-metals CEMS, Cd CEMS, or Pb CEMS.
Scrubber liquor flow rate from each scrubber (Wet scrubber)	HCl, SO_2	HCl CEMS or SO_2 CEMS.
Scrubber liquor pH from each scrubber (Wet scrubber) Secondary voltage and secondary amperage of collection plates (All ESP). Effluent flow rate (Wet ESP).	HCl, SO_2 PM, Cd, Pb, Hg	HCl CEMS or SO_2 CEMS. PM CEMS, Pb CEMS, or Cd CEMS.
Temperature of afterburner	CO	None.
Bag leak detection monitoring system alarm time (FF)	PM, Cd, Pb, Hg	None.
Air pollution control device inspections	All	None.
Time of visible emissions from ash handling	PM	None.
Opacity from combustion stacks	PM	PM CEMS or COMS (only if wet scrubber is not used).

Table 11 of this preamble presents a summary of the SSI test methods and approved alternative compliance methods.

TABLE 11—SUMMARY OF SSI TEST METHODS AND APPROVED ALTERNATIVE TEST METHODS

Pollutant/parameter	Test Methods [1]	Approved Alternative methods [1]	Comments
Cd	Method 29 at 40 CFR part 60, appendix A–8.	Cd CEMS or Multi-metals CEMS	Cd CEMS or multi-metal CEMS are optional for all sources in lieu of annual Cd test.
CDD/CDF	Method 23 at 40 CFR part 60, appendix A–7.	ISTDMS	ISTDMS are optional for all sources in lieu of annual CDD/CDF testing.
CO	CO CEMS (new sources) and Method 10, 10A, or 10B at 40 CFR part 60 appendix A–4.	CO CEMS (for existing sources)	CO CEMS are optional for existing sources in lieu of annual CO test; CO CEMS are required for new sources.
Flue and exhaust gas analysis.	Method 3A or 3B at 40 CFR part 60, appendix A–2.	ASME PTC 19.10–1981 part 10	
HCl	Method 26 or Method 26A at 40 CFR part 60, appendix A–8.	HCl CEMS	HCl CEMS are optional for all sources in lieu of annual HCl test.
Hg	Method 29 at 40 CFR part 60, appendix A–8.	Method 30B at 40 CFR part 60, appendix A (when published in the Federal Register); Multi-metals CEMS; Hg CEMS (PS–12A); ISTMMS (PS–12B of Appendix B of part 75); or ASTM D6784–02, Standard Test Method for Elemental Oxidized, Particle Bound and Total Mercury in Flue Gas Generated from Coal-fired Stationary Sources (Ontario Hydro Method).	Multi-metal CEMS, Hg CEMS, or ISTMMS are optional for all sources in lieu of annual Hg test.
NO_X	Method 7 or 7E at 40 CFR part 60, appendix A–4.	NO_X CEMS	NO_X CEMS are optional for all sources in lieu of annual NO_X test.
Opacity	Method 9 of 40 CFR part 60, appendix A–4.	PM CEMS, COMS	PM CEMS and COMS are optional for all sources in lieu of annual opacity testing.
Pb	Method 29 at 40 CFR part 60, appendix A–8.	Pb CEMS or Multi-metals CEMS	PB CEMS or multi-metal CEMS are optional for all sources in lieu of annual Pb test.
PM	Method 5, at 40 CFR part 60, appendix A–3; Method 26A or 29 at 40 CFR part 60, appendix A–8.	PM CEMS	PM CEMS are optional for all sources in lieu of annual PM test required.
PM, Pb, Cd, Hg	Bag leak detection system or PM CEMS.		Bag leak detection systems are required for units equipped with FF.
SO_2	Method 6 or Method 6C at 40 CFR part 60, appendix A–4.	HCl CEMS	SO_2 CEMS are optional for all sources in lieu of annual SO_2 test.
Visible emissions of fugitive ash.	Method 22 of appendix A–7 of this part.	None	

[1] EPA Reference Methods in appendix A of 40 CFR part 60.

This proposal contains no specific data availability requirements for continuous monitoring systems. Generally, monitoring must be conducted and emissions data must be collected at all times the SSI unit is operating, except for periods of monitoring system malfunction, repairs associated with monitoring system malfunction, and required monitoring system quality assurance or quality control activities. We seek comment on approaches to provide this data, *e.g.,* redundant CEMS, prescribed missing data procedures, owner- or operator-developed missing data procedures, or parametric monitoring. EPA is considering changing the averaging times for all CEMS and CASS from 24-hour block averages to 12-hour rolling averages to be consistent with the averaging times of the PS tests. We are requesting comment on the change. Additionally, we seek comment on the proposed 4-hour rolling averaging time for compliance with operating limits.

The proposed rules would require repeat performance tests and updates to the monitoring plan if any of the following process changes occur: (1) A change in the process employed at the wastewater treatment facility that affects the SSI unit, (2) a change in the air pollution control devices used to comply with the emission limits and (3) an increase in the allowable wastewater received from an industrial source to the wastewater treatment facility. We are requesting comment on these requirements and on the designation of what a process change is at a SSI unit.

The OW 503 standards allow compliance demonstration by analyzing the pollutant concentration in the sludge ensuring the concentrations are sufficiently low that emission limits may be met. We request comment on whether facilities should be allowed to comply with the EG and NSPS based on monitoring the content of the sludge entering the SSI unit.

In previous CAA section 129 standards, a waste management plan was required to identify both the feasibility and the approach to separating certain components of solid waste from the waste stream to reduce the amount of toxic emissions from incinerated waste. Elements of the waste management plan included identifying reasonably available additional waste management measures, the cost and emission reductions of the additional measures and other associated environmental or energy impacts.

As previously discussed, all SSI units are required to meet the EPA's OW part 503 standards. Part 503 establishes daily average concentration limits for Pb, Cd

and other metals in sewage sludge that is disposed of by incineration. Part 503 also requires that SSI units meet the National Emission Standards for Beryllium and Mercury in subparts C and E, respectively, of 40 CFR part 61. In order to meet the 40 CFR part 503 standards, facilities are already incorporating management practices and measures to reduce waste and limit the concentration of pollutants in the sludge sent to SSI units, such as segregating contaminated and uncontaminated wastes and establishing discharge limits or pre-treatment standards for non-domestic users discharging wastewater to POTW. We are requesting comment on the need for a waste management plan for SSI units in the promulgated rules.

F. Rationale for Recordkeeping and Reporting Requirements

Section 129 of the CAA requires the EPA to develop regulations that include requirements for reporting the results of testing and monitoring performed to determine compliance with the standards and guidelines. The requirements must specify the form and frequency of the reports demonstrating compliance. If there are no exceedances, compliance reports are submitted annually. However, if there is an exceedance, reports showing the exceedance of any standard or guideline must be submitted separately for review and potential enforcement action. Copies of testing and monitoring results must be maintained on file at the affected facility. Other types of records are necessary to ensure that all provisions of the standards or guidelines are being met. Examples include siting analyses and operator training and qualification records.

G. Rationale for Operator Training and Qualification Requirements

The proposed standards and guidelines include operator training and qualification requirements for SSI unit operators. These requirements provide flexibility by allowing State approved training and qualification programs. Where there are no State approved programs, the proposed regulations include minimum requirements for training and qualification. The minimum requirements include completion of a training course covering specified topics.

In developing these requirements, training and qualification programs currently proposed or promulgated for other types of solid waste incineration units were reviewed to develop requirements appropriate for the SSI source category.

H. Rationale for Siting Requirements

Section 129 of the CAA states that performance standards for new solid waste incineration units must incorporate siting requirements that minimize, on a site-specific basis and to the maximum extent practicable, potential risks to public health or the environment. In accordance with section 129, the EPA is proposing site selection criteria for SSI units that commence construction on or after the date of proposal of this rule (*i.e.,* "new" units). The siting requirements would not apply to existing SSI units.

The siting requirements in this proposal would require the owner or operator of a new unit to prepare an analysis of the impacts of the new unit. The owner or operator must consider air pollution control alternatives that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to public health or the environment. In considering such alternatives, the owner or operator may consider costs, energy impacts, nonair environmental impacts, or any other factors related to the practicability of the alternatives. To avoid duplication, analyses of facility impacts prepared to comply with State, local, or other Federal regulatory requirements may be used to satisfy this requirement, provided they include the consideration of air pollution control alternatives specified previously. Such State, local, or Federal requirements may include, but are not limited to, State-specific criteria or national criteria established by the National Environmental Policy Act or new source review permitting requirements. The owner or operator must submit the siting information to EPA prior to commencing construction of the facility.

I. What are the SSM provisions?

The United States Court of Appeals for the District of Columbia Circuit vacated portions of 2 provisions in EPA's CAA section 112 regulations governing the emissions of HAP during periods of SSM. *Sierra Club* v. *EPA,* 551 F.3d 1019 (DC Cir. 2008), cert. denied, 130 S. Ct. 1735 (U.S. 2010). Specifically, the Court vacated the SSM exemption contained in 40 CFR 63.6(f)(1) and 40 CFR 63.6(h)(1), (the "General Provisions Rule,") that EPA promulgated under section 112 of the CAA. When incorporated into CAA section 112(d) regulations for specific source categories, these 2 provisions exempt sources from the requirement to comply with the otherwise applicable CAA section 112(d) emission standard during periods of SSM. The Court found that the definition of "emission standards," which appears at 42 U.S.C. 7602(k), and which applies equally to sections 112 and 129, requires EPA to apply MACT emissions standards on a continuous basis, thereby precluding exemptions applied for malfunctions or other singular events.[17] Thus, the legality of source category-specific SSM exemptions in rules promulgated pursuant to section 129 is questionable. Therefore, consistent with *Sierra Club* v. *EPA,* EPA is proposing that the standards in this rule apply at all times. EPA has attempted to ensure that we have not incorporated into proposed regulatory language any provisions that are inappropriate, unnecessary, or redundant in the absence of a SSM exemption. We are specifically seeking comment on whether there are any such provisions that we have inadvertently incorporated or overlooked. If we receive relevant data that would warrant different standards, we may set those standards in the final rule.

We note that the General Provisions of 40 CFR part 60 include provisions that are inconsistent with the proposed requirement that the SSI emissions standards apply at all times. For example, the General Provisions states that exceedances during periods of startup, shutdown, and malfunction are generally not considered violations of the standards.[18] To avoid confusion between the General Provisions and the SSI emissions regulations, we are proposing that, in circumstances where the requirements of the General Provisions are inconsistent with the requirements of the SSI emissions regulations, the provisions in the SSI regulations will control.

In establishing the standards in this rule, EPA has taken into account startup and shutdown periods and, for the reasons explained below, has not established different standards for those periods.

We are not proposing a separate emission standard for the source category that applies during periods of startup and shutdown. Based on the information available at this time, we believe that SSI units will be able to meet the emission limits during periods of startup. Units we have information on use natural gas, landfill gas, or distillate oil to start the unit and add waste once the unit has reached combustion temperatures. Emissions from burning natural gas, landfill gas or distillate fuel oil are expected to generally be lower than from burning solid wastes. Emissions during periods of shutdown

[17] 551 F.3d at 1027.

[18] *See* 40 CFR 60.8(c).

are also generally lower than emissions during normal operations because the materials in the incinerator would be almost fully combusted before shutdown occurs. Furthermore, the approach for establishing MACT floors for SSI units ranked individual SSI units based on actual performance for each pollutant and subcategory, with an appropriate accounting of emissions variability. Because we accounted for emissions variability, we believe we have adequately addressed any minor variability that may potentially occur during startup or shutdown.

Periods of startup, normal operations, and shutdown are all predictable and routine aspects of a source's operations. However, by contrast, malfunction is defined as a "sudden, infrequent, and not reasonably preventable failure of air pollution control and monitoring equipment, process equipment or a process to operate in a normal or usual manner * * *" (40 CFR 63.2). EPA has determined that malfunctions should not be viewed as a distinct operating mode and, therefore, any emissions that occur at such times do not need to be factored into development of CAA section 129 standards, which, once promulgated, apply at all times. It is reasonable to interpret section 129 as not requiring EPA to account for malfunctions in setting emissions standards. For example, we note that section 129 uses the concept of "best performing" sources in defining MACT, the level of stringency that major source standards must meet. Applying the concept of "best performing" to a source that is malfunctioning presents significant difficulties. The goal of best performing sources is to operate in such a way as to avoid malfunctions of their units.

Moreover, even if malfunctions were considered a distinct operating mode, we believe it would be impracticable to take malfunctions into account in setting CAA section 129 standards for SSI. As noted above, by definition, malfunctions are sudden and unexpected events, and it would be difficult to set a standard that takes into account the myriad different types of malfunctions that can occur across all sources in the category. Moreover, malfunctions can vary in frequency, degree, and duration, further complicating standard setting.

For the SSI standards, malfunctions are required to be reported in deviation reports. We will then review the deviation reports to determine if the deviation is a violation of the standards.

In the event that a source fails to comply with the applicable CAA section 129 standards as a result of a malfunction event, EPA would determine an appropriate response based on, among other things, the good faith efforts of the source to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. EPA would also consider whether the source's failure to comply with the CAA section 129 standard was, in fact, "sudden, infrequent, not reasonably preventable" and was not instead "caused in part by poor maintenance or careless operation."[19]

Moreover, EPA recognizes that even equipment that is properly designed and maintained can fail and that such failure can sometimes cause an exceedance of the relevant emission standard.[20] EPA is therefore proposing to add to the final rule an affirmative defense to civil penalties for exceedances of emission limits that are caused by malfunctions.[21] We also added other regulatory provisions to specify the elements that are necessary to establish this affirmative defense; the source must prove by a preponderance of the evidence that it has met all of the elements set forth in 40 CFR 60.4860 and in 40 CFR 60.5180. The criteria ensure that the affirmative defense is available only where the event that causes an exceedance of the emission limit meets the narrow definition of malfunction in 40 CFR 60.2 (sudden, infrequent, not reasonable preventable and not caused by poor maintenance and or careless operation). The criteria also are designed to ensure that steps are taken to correct the malfunction, to minimize emissions in accordance with section 40 CFR part 60 subpart LLLL and 40 CFR part 60 subpart MMMM and to prevent future malfunctions. In any judicial or administrative proceeding, the Administrator may challenge the assertion of the affirmative defense and, if the respondent has not met its burden of proving all of the requirements in the affirmative defense, appropriate penalties may be assessed in accordance with section 113 of the Clean Air Act (see also 40 CFR Part 22.77).

[19] 40 CFR 60.2 (definition of malfunction).

[20] See, *e.g.,* State Implementation Plans: Policy Regarding Excessive Emissions During Malfunctions, Startup, and Shutdown (Sept. 20, 1999); Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions (Feb. 15, 1983).

[21] See proposed definition 40 CFR 60.4930 and 40 CFR 60.5250 (defining "affirmative defense" to mean, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding).

J. Delegation of Authority To Implement and Enforce These Provisions

We are proposing a section on delegation of authority to clarify which authorities can be delegated or transferred to State, local, and tribal air pollution control agencies in this rulemaking and which are retained by EPA. For previous rules, there has been some confusion about what authority can be delegated to and exercised by State, local, and tribal air pollution control agencies and what authority must be retained by EPA. In some cases, State, local, and tribal air pollution control agencies were making decisions, such as allowing waivers of some provisions of this subpart, which cannot be delegated to those agencies.

In the proposed SSI NSPS, the authorities that would be retained by EPA are listed in 40 CFR 60.4785 of subpart LLLL. They include authorities that must be retained by EPA for all NSPS: Approval of alternatives to the emission limits, approval of major alternatives to test methods, or monitoring and approval of major alternatives to recordkeeping and reporting. The list also specifically includes establishment of operating limits for control devices other than those listed in the rule per proposed 40 CFR 60.4855; and review of status reports submitted when no qualified operators are available per proposed 40 CFR 60.4835(b)(2). It also includes the approval of performance test and data reduction waivers under 40 CFR 60.8(b) and preconstruction siting analysis in proposed 40 CFR 60.4800. These authorities may affect the stringency of the emission standards or limitations, which can only be amended by Federal rulemaking; thus they cannot be transferred to State, local, or tribal air pollution control agencies. We are also including 40 CFR 60.5050 in the proposed EG to make the provisions regarding the implementation and enforcement authorities in both subparts LLLL and MMMM consistent. We are seeking comment on whether these or other authorities should be retained by EPA or delegated to State, local, or tribal air pollution control agencies.

K. State Plans

We are proposing regulatory language to clarify how states and eligible tribes can fulfill their obligation under CAA section 129 (b)(2) in lieu of submitting a State plan for review and approval. We are adding proposed 40 CFR 60.5045 that will clarify how states and eligible tribes can fulfill the obligation under

CAA section 129 (b)(2) by submitting an acceptable, as specified in 40 CFR 60.2541, written request for delegation of the Federal plan. Proposed 40 CFR 60.5045 lists specific requirements, such as a demonstration of adequate resources and legal authority to implement and enforce the Federal plan, that must be met in order to receive delegation of the Federal plan. We are seeking comment on this provision.

V. Impacts of the Proposed Action

A. Impacts of the Proposed Action for Existing Units

1. What are the primary air impacts?

We have estimated the potential emission reductions that may be realized through implementation of the proposed emission limits. Table 12 of this preamble summarizes the emission reductions for MACT compliance for each pollutant. The analysis is documented in the memorandum "Analysis of Beyond the Maximum Achievable Control Technology (MACT) Floor Controls for Existing SSI Units."

TABLE 12—PROJECTED EMISSION REDUCTIONS FOR EXISTING SSI UNITS IF ALL ENTITIES COMPLY WITH THE PROPOSED EMISSION LIMITS

Pollutant	Reductions achieved through meeting MACT by subcategory (TPY)		Total reductions (TPY)
	Fluidized bed	Multiple hearth	
Cd	0.0010	1.4	1.4
CDD/CDF TEQ	0.0000065	0.0000013	0.0000078
CDD/CDF TMB	0.000079	0.000020	0.000099
CO	0	0	0
HCl	1.5	92	93
Hg	0.058	2.7	2.7
NO_X	0	4.3	4.3
Pb	0.0053	2.6	2.6
PM	41	278	319
SO_2	60	2,100	2,200
Total	102	2,510	2,610

2. What are the water and solid waste impacts?

We anticipate affected sources would need to apply additional controls to meet the proposed emission limits. These controls may utilize water, such as wet scrubbers, which would need to be treated. We estimate an annual requirement of 346 million gallons per year of additional wastewater would be generated as a result of operating additional controls or increased sorbents.

Likewise, the addition of PM controls or improvements to controls already in place would increase the amount of particulate collected that would require disposal. Furthermore, activated carbon injection may be utilized by some sources, which would result in additional solid waste needing disposal. The annual amounts of solid waste that would require disposal are anticipated to be approximately 364 TPY from PM capture and 11,400 TPY from activated carbon injection. The analysis is documented in the memorandum "Secondary Impacts for the Sewage Sludge Incineration Source Category."

3. What are the energy impacts?

The energy impacts associated with meeting the proposed emission limits would consist primarily of additional electricity needs to run added or improved air pollution control devices. For example, increased scrubber pump horsepower may cause slight increases in electricity consumption; sorbent injection controls would likewise require electricity to power pumps and motors. We anticipate that an additional 33,800 megawatt-hours per year would be required for the additional and improved control devices. The analysis is documented in the memorandum "Secondary Impacts for the Sewage Sludge Incineration Source Category."

4. What are the secondary air impacts?

For SSI units adding controls to meet the proposed emission limits, we anticipate very minor secondary air impacts. The combustion of fuel needed to generate additional electricity would yield slight increases in emissions, including NO_X, CO, PM and SO_2 and an increase in CO_2 emissions. Since NO_X and SO_2 are covered by capped emissions trading programs, and methodological limitations prevent us from quantifying the change in CO and PM, we do not estimate an increase in secondary air impacts for this rule from additional electricity demand.

5. What are the cost and economic impacts?

We have estimated compliance costs for all existing units to add the necessary controls, monitoring equipment, inspections, recordkeeping, and reporting requirements to comply with Option 2 (*i.e.,* the proposed SSI standards). Based on this analysis, we anticipate an overall total capital investment of $225 million with an associated total annualized cost of $105 million, in 2008 dollars (and using a discount rate of 7 percent), as shown in Table 13 of this preamble. We anticipate that owner/operators will need to install 1 or more air pollution control devices for 214 of the 218 affected units to meet the proposed emission limits. We are requesting comment on whether there are space constraints at wastewater treatment facilities that would affect the feasibility and cost of installing air pollution control devices. The analysis is documented in the memorandum "Analysis of Beyond the Maximum Achievable Control Technology (MACT) Floor Controls for Existing SSI Units."

TABLE 13—SUMMARY OF COSTS FOR EXISTING SSI IF ALL ENTITIES COMPLY WITH PROPOSED EMISSION LIMITS

[Millions of 2008$]

Subcategory	Capital cost ($ million)	Annualized cost ($ million/yr) [a]
Fluidized Bed	86.7	32.3
Multiple Hearth	138.0	72.7
Total	224.7	105.0

[a] Calculated using a discount factor of 7 percent.

Analysis of Alternative Sewage Sludge Disposal. We have also evaluated the possibility that existing SSI owners would dispose of sewage sludge through alternative methods rather than incineration, such as landfilling, land application, or sending sewage sludge to another SSI unit. The alternative method we analyzed was landfilling, which is generally more expensive than land application, but would provide a more conservative estimate of the cost of alternative disposal.

We conducted this analysis by determining the cost of landfilling and then subtracting the existing cost of operating the SSI unit (because this cost would no longer be incurred). The cost of landfilling sewage sludge included landfill tipping fees as well as transportation costs. The cost of storing dewatered sewage sludge on-site for up to four days was also included in the landfilling cost. Sewage sludge incineration unit operating costs were obtained from ICR questionnaires sent to 9 facilities. These costs are discussed in more detail in the memorandum "Cost and Emission Reduction of the MACT Floor Level of Control," which is in the SSI docket. We request comment on the assumptions and cost estimates used for the landfilling option. The results of the analysis shows that, for most facilities, landfilling sewage sludge is a more economically advantageous disposal option than continuing to operate their SSI unit. It was assumed that smaller sources presented with the option of applying MACT controls or landfilling would select landfilling because the analysis shows a cost savings, even when not considering the additional cost of MACT controls. If the cost of the MACT controls were also included, it would be even more advantageous to landfill.

However, there are several uncertainties with the analysis that may significantly impact the results. These include:

- The operating cost information was based on only the 9 ICR respondents, which are larger units. Smaller units may have lower or different operating costs that are not captured in the operating cost factors or different capacity utilizations or operating hours.
- For some SSI units, the nearest landfill accepting sewage sludge may be farther than assumed in the analysis.

To confirm the results of the analysis, we contacted 9 owners of wastewater treatment facilities that would be considered small entities, that is, the population of the municipalities or regional authorities that own the facility were less than or equal to 50,000 people. We also reviewed company Web sites for other small entities to find the status of the SSI units. The results of the data collection showed that the majority of small entities have shut down their SSI unit and are either land applying or landfilling. Others are planning on landfilling in the future. The data collection, as well as the cost estimate for the landfilling option is discussed in the memorandum, "Cost and Emission Reduction of the MACT Floor Level of Control."

While we are able to confirm this analysis for smaller entities, we were unable to conduct it for larger entities. We also believe that facilities that use larger SSI units may have more difficulty in landfilling sewage sludge due to potential capacity issues at landfills. This may result in higher tipping fees and transportation costs to find landfills with available capacity. As a result of these concerns, we do not believe that larger entities would necessarily find it more advantageous to landfill sewage sludge.

We believe that smaller entities (*i.e.,* with populations less than 50,000 people) are likely to landfill. This would result in lowered costs of compliance with the MACT for existing sources, as well as minor changes in the emission reductions achieved. We also believe that based on our estimates there will be no increased cost to small entities using this alternative option. However, it does not change the result that option 2 (MACT floor levels plus meeting the beyond-the-floor Hg limit of 0.02 mg/dscm) would be appropriate due to the significant Hg emissions reductions that would still occur for larger sources. The analysis is documented in the memorandum "Analysis of Beyond the Maximum Achievable Control Technology (MACT) Floor Controls for Existing SSI Units."

Table 14 of this preamble summarizes the costs associated with small entities landfilling and large entities complying with the MACT control levels. For the option selected, we estimate that 196 (90%) of the affected units will need to install 1 or more air pollution control devices.

TABLE 14—SUMMARY OF COSTS FOR EXISTING SSI UNITS IF LARGE ENTITIES COMPLY WITH THE PROPOSED EMISSION LIMITS AND SMALL ENTITIES UTILIZE ALTERNATIVE DISPOSAL (i.e., LANDFILL)

[Millions of 2008$]

Subcategory	Capital cost ($ million)	Annualized cost ($ million/yr) [a]
Fluidized Bed	70.0	26.2
Multiple Hearth	130.9	62.5
Total	200.9	88.7

[a] Calculated using a discount factor of 7 percent.

We have estimated the potential emission reductions that may be realized through implementation of the proposed emission limits. For the case where small entities choose to landfill, some emission reductions are offset by emissions resulting from hauling, landfill gas generation, and flaring. The estimation of these emissions is documented in the memorandum "Cost and Emission Reduction of the MACT Floor Level of Control." Emissions from landfilling are subtracted from the total reductions resulting from units complying or shutting down. Table 15 of this preamble summarizes the net emission reductions for each pollutant.

TABLE 15—PROJECTED EMISSION REDUCTIONS FOR EXISTING SSI IF LARGE ENTITIES COMPLY WITH THE EMISSION LIMITS AND SMALL ENTITIES UTILIZE ALTERNATIVE DISPOSAL (i.e., LANDFILL)

Pollutant	Reductions achieved through meeting MACT by subcategory (TPY)		Emissions from hauling (TPY)	Emissions from landfill and flare (TPY)	Total reductions (TPY)
	Fluidized bed	Multiple hearth			
Cd	0.0028	1.55	0	0	1.6
CDD/CDF TEQ	0.0000065	0.0000013	0	0	0.0000078
CDD/CDF TMB	0.000080	0.000020	0	0	0.000099
CO	19	3,100	6.0	240	2,900
HCl	1.8	95	0	0.38	96
Hg	0.061	2.7	0	0.00000023	2.8
Pb	0.15	3.0	0	0	3.0
PM	43	350	1.3	0.90	390
NO_X	53.0	794	22	2.1	823
SO_2	77	2,200	0.052	0.75	2,300
Total	190	6,410	30	244	6,330

With respect to water and solid waste impacts in the case where large entities comply and small entities landfill, we estimate an annual requirement of 319 million gallons per year of additional wastewater would be generated as a result of operating additional controls or increased sorbents for the units that add controls to comply with the rule. Additionally, the annual amounts of solid waste that would require disposal are anticipated to be approximately 324 TPY from PM capture and 10,000 TPY from activated carbon injection. The largest impact on solid waste, however, would come from small entities choosing to discontinue the use of their SSI and instead send the waste to a landfill. We estimate approximately 359,000 TPY of waste would be diverted to landfills. The analysis is documented in the memorandum "Secondary Impacts for the Sewage Sludge Incineration Source Category." We request comment on whether landfilling is more advantageous environmentally than the incineration of sewage sludge.

As described in section V.A.3 of this preamble, the energy impacts associated with meeting the proposed emission limits would consist primarily of additional electricity needs to run added or improved air pollution control devices. For the scenario where only large entities comply, we anticipate that an additional 29,200 megawatt-hours per year would be required for the additional and improved control devices. The analysis is documented in the memorandum "Secondary Impacts for the Sewage Sludge Incineration Source Category."

For SSI units adding controls to meet the proposed emission limits, we anticipate very minor secondary air impacts. As previously noted, in the case where small entities choose to landfill, there would be additional air impacts due to emissions generated by trucks hauling waste and emissions from landfill gas and flaring. Table 16 of this preamble summarizes the estimated results.

TABLE 16—SUMMARY OF SECONDARY IMPACTS FOR EXISTING SOURCES IF LARGE ENTITIES COMPLY WITH THE PROPOSED EMISSION LIMITS AND SMALL ENTITIES UTILIZE ALTERNATIVE DISPOSAL (i.e., LANDFILL)

Pollutant	Secondary air impacts from diverting SSI waste to landfills (TPY)		Total secondary impacts (ton/yr)
	Waste-hauling vehicles	Landfill gas and flare	
Cd	—	—	—
CDD/CDF, TEQ	—	—	—
CO	6.03	240.2	246.23
HCl	—	0.38	0.38
Hg	—	0.000000233	0.000000233
NO_X	21.84	2.11	23.95
Pb	—	—	—
PM	1.30	0.90	2.20
$PM_{2.5}$	1.12	—	1.12
SO_2	0.05	0.75	0.80

TABLE 16—SUMMARY OF SECONDARY IMPACTS FOR EXISTING SOURCES IF LARGE ENTITIES COMPLY WITH THE PROPOSED EMISSION LIMITS AND SMALL ENTITIES UTILIZE ALTERNATIVE DISPOSAL (i.e., LANDFILL)—Continued

Pollutant	Secondary air impacts from diverting SSI waste to landfills (TPY)		Total secondary impacts (ton/yr)
	Waste-hauling vehicles	Landfill gas and flare	
Total	30.35	244.3	274.65

Because the proposed regulatory option affects governmental entities (96 of the 97 owners are governmental entities) providing services not provided in a market, the economic analysis focused on the comparison of control cost to total governmental revenue. (*See* Table 17 of this preamble.) Table 17 sets forth the overall costs to large and small municipalities and shows that there will be no increased costs to small municipalities and a net, relatively small, increase for large municipalities.

TABLE 17—REVENUE TESTS FOR GOVERNMENT ENTITIES IF LARGE ENTITIES COMPLY WITH THE EMISSION LIMITS AND SMALL ENTITIES UTILIZE ALTERNATIVE DISPOSAL (i.e., LANDFILL)

Sample statistic for cost-revenue-ratios	Small	Large
Mean	−0.6%	0.2%
Median	−0.2%	0.1%
Minimum	−2.6%	0.0%
Maximum	0.7%	1.0%
Number of Entities	18	79
Number of Entities >1%	0	0
Number of Entities >3%	0	0

None of the entities has cost-revenue-ratios greater than 1 percent.

B. Impacts of the Proposed Action for New Units

As discussed in section IV.C.2 of this preamble, based on trends of SSI units constructed and replaced, technical advantages of FB incinerators, and information provided by the industry on likely units constructed, we believe that new SSI units constructed are likely to be FB incinerators.

1. What are the primary air impacts?

We have estimated the potential emission reductions that may be realized through implementation of the proposed emission limits on 2 new FB incinerators potentially being constructed in the next 5 years. Table 18 of this preamble summarizes the emission reductions for MACT compliance for each pollutant. The analysis is documented in the memorandum "Estimation of Impacts for New Units Constructed Within 5 Years After Promulgation of the SSI NSPS."

TABLE 18—EMISSION REDUCTIONS FOR 2 NEW SSI UNITS (i.e., FLUIDIZED BED INCINERATORS) CONSTRUCTED

Pollutant	Emission reduction (TPY)
Cd	0.00047
CDD/CDF, TEQ	0.00000038
CDD/CDF, TMB	0.0000044
CO	3.022
HCl	0.033
Hg	0.0036
NO_X	1.07
Pb	0.0031
PM	2.43
$PM_{2.5}$	2.76
SO_2	1.01
Total	10.33

2. What are the water and solid waste impacts?

We anticipate affected sources would need to apply controls in addition to what they would have planned to include in the absence of this rule to meet the proposed emission limits. These controls may utilize water, such as wet scrubbers, which would need to be treated. We estimate an annual requirement of 18.2 million gallons per year of additional wastewater would be generated as a result of operating additional controls or increased sorbents for the 2 new units expected to come online in the next 5 years. The analysis is documented in the memorandum "Analysis of New Units for the Sewage Sludge Incineration Source Category Analysis of Secondary Impacts for the Sewage Sludge Incineration Source Category."

Likewise, the application of PM controls results in particulate collected that would require disposal. Furthermore, activated carbon injection may be used by some sources, which would result in solid waste needing disposal. The annual amounts of solid waste that would require disposal are anticipated to be approximately 4 TPY from PM capture and 97 TPY from activated carbon injection for the 2 units.

3. What are the energy impacts?

The energy impacts associated with meeting the proposed emission limits would consist primarily of additional electricity needs to run added or improved air pollution control devices. For example, increased scrubber pump horsepower may cause slight increases in electricity consumption. Sorbent injection controls would likewise require electricity to power pumps and motors. By our estimate, we anticipate that an additional 1,350 megawatt-hours

per year would be required for the additional and improved control devices for the 2 new units modeled to come online in the next 5 years. The analysis is documented in the memorandum "Analysis of Secondary Impacts for the Sewage Sludge Incineration Source Category Analysis of New Units for the Sewage Sludge Incineration Source Category."

4. What are the secondary air impacts?

For SSI units adding controls to meet the proposed emission limits, we anticipate very minor secondary air impacts. The analysis is documented in the memorandum "Analysis of Secondary Impacts for the Sewage Sludge Incineration Source Category."

5. What are the cost impacts?

We have estimated compliance costs for new SSI units coming online in the next 5 years. This analysis is based on a model plant, the assumption that 2 new units will come online and will add the necessary controls, monitoring equipment, inspections, recordkeeping, and reporting requirements to comply with the proposed SSI standards. Based on this analysis, we anticipate an overall total capital investment of $7.81 million (2008$) with an associated total annualized cost of $2.70 million (2008$ and using a 7 percent discount rate). This analysis assumes that new SSI units constructed are only FB incinerators, as discussed in section IV.C.2 of this preamble.

C. Benefits of the Proposed NSPS and EG

We estimate the monetized benefits of this proposed regulatory action to be $130 million to $320 million (2008$, 3 percent discount rate) in the implementation year (2015). The monetized benefits of the proposed regulatory action at a 7 percent discount rate are $120 million to $290 million (2008$). These estimates reflect energy disbenefits valued at $0.5 million. Using alternate relationships between $PM_{2.5}$ and premature mortality supplied by experts, higher and lower benefits estimates are plausible, but most of the expert-based estimates fall between these 2 estimates.[22] A summary of the monetized benefits estimates at discount rates of 3 percent and 7 percent is in Table 19 of this preamble.

TABLE 19—SUMMARY OF THE MONETIZED BENEFITS ESTIMATES FOR NEW AND EXISTING SSI UNITS IN 2015

[Millions of 2008$][1]

Pollutant	Estimated emission reductions (TPY)	Total monetized benefits (3% discount rate)	Total monetized benefits (7% discount rate)
$PM_{2.5}$	254	$58 to $140	$52 to $130.
$PM_{2.5}$ Precursors:			
SO_2	2,298	$68 to $170	$61 to $150.
NO_X	824	$4.0 to $9.8	$3.6 to $8.8.
Total		$130 to $320	$120 to $290.

[1] All estimates are for the implementation year (2015) and are rounded to 2 significant figures so numbers may not sum across rows. All fine particles are assumed to have equivalent health effects, but the benefit-per-ton estimates vary between precursors because each ton of precursor reduced has a different propensity to form $PM_{2.5}$. Benefits from reducing HAP are not included. These results include 2 new FB incinerators anticipated to come online by 2015, and the assumption that some small entities will landfill. These estimates do not include the energy disbenefits valued at $0.5 million, but the rounded totals do not change. CO_2-related disbenefits were calculated using the social cost of carbon, which is discussed further in the RIA.

These benefits estimates represent the total monetized human health benefits for populations exposed to less $PM_{2.5}$ in 2015 from controls installed to reduce air pollutants in order to meet these standards. These estimates are calculated as the sum of the monetized value of avoided premature mortality and morbidity associated with reducing a ton of $PM_{2.5}$ and $PM_{2.5}$ precursor emissions. To estimate human health benefits derived from reducing $PM_{2.5}$ and $PM_{2.5}$ precursor emissions, we utilized the general approach and methodology laid out in Fann *et al.* (2009).[23]

To generate the benefit-per-ton estimates, we used a model to convert emissions of direct $PM_{2.5}$ and $PM_{2.5}$ precursors into changes in ambient $PM_{2.5}$ levels and another model to estimate the changes in human health associated with that change in air quality. Finally, the monetized health benefits were divided by the emission reductions to create the benefit-per-ton estimates. These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type. Directly emitted PM, SO_2, and NO_X are the primary $PM_{2.5}$ precursors affected by this rule. Even though we assume that all fine particles have equivalent health effects, the benefit-per-ton estimates vary between precursors because each ton of precursor reduced has a different propensity to form $PM_{2.5}$. For example, SO_2 has a lower benefit-per-ton estimate than direct $PM_{2.5}$ because it does not form as much $PM_{2.5}$, thus the exposure would be lower, and the monetized health benefits would be lower.

For context, it is important to note that the magnitude of the PM benefits is largely driven by the concentration response function for premature mortality. Experts have advised EPA to consider a variety of assumptions, including estimates based on both empirical (epidemiological) studies and judgments elicited from scientific experts, to characterize the uncertainty in the relationship between $PM_{2.5}$ concentrations and premature mortality. For this proposed rule, we cite two key

[22] Roman *et al.,* 2008. Expert Judgment Assessment of the Mortality Impact of Changes in Ambient Fine Particulate Matter in the U.S. Environ. Sci. Technol., 42, 7, 2268–2274.

[23] Fann, N., C.M. Fulcher, B.J. Hubbell. 2009. "The influence of location, source, and emission type in estimates of the human health benefits of reducing a ton of air pollution." Air Qual Atmos Health. (2009) 2:169–176.

empirical studies, one based on the American Cancer Society cohort study [24] and the extended Six Cities cohort study.[25] In the RIA for this proposed rule, which is available in the docket, we also include benefits estimates derived from expert judgments and other assumptions.

EPA strives to use the best available science to support our benefits analyses. We recognize that interpretation of the science regarding air pollution and health is dynamic and evolving. After reviewing the scientific literature and recent scientific advice, we have determined that the no-threshold model is the most appropriate model for assessing the mortality benefits associated with reducing $PM_{2.5}$ exposure. Consistent with this recent advice, we are replacing the previous threshold sensitivity analysis with a new "LML" assessment. While an LML assessment provides some insight into the level of uncertainty in the estimated PM mortality benefits, EPA does not view the LML as a threshold and continues to quantify PM-related mortality impacts using a full range of modeled air quality concentrations.

Most of the estimated PM-related benefits in this rule would accrue to populations exposed to higher levels of $PM_{2.5}$. Using the Pope, *et al.,* (2002) study, 85 percent of the population is exposed at or above the LML of 7.5 μg/m^3. Using the Laden, *et al.,* (2006) study, 40 percent of the population is exposed above the LML of 10 μg/m^3. It is important to emphasize that we have high confidence in $PM_{2.5}$-related effects down to the lowest LML of the major cohort studies. This fact is important, because as we estimate PM-related mortality among populations exposed to levels of $PM_{2.5}$ that are successively lower, our confidence in the results diminishes. However, our analysis shows that the great majority of the impacts occur at higher exposures.

This analysis does not include the type of detailed uncertainty assessment found in the 2006 $PM_{2.5}$ NAAQS RIA because we lack the necessary air quality input and monitoring data to run the benefits model. In addition, we have not conducted any air quality modeling for this rule. The 2006 $PM_{2.5}$ NAAQS benefits analysis [26] provides an indication of the sensitivity of our results to various assumptions.

It should be emphasized that the monetized benefits estimates provided above do not include benefits from several important benefit categories, including reducing other air pollutants, ecosystem effects, and visibility impairment. The benefits from reducing HAP have not been monetized in this analysis, including reducing 2,900 tons of CO, 96 tons of HCl, 3.0 tons of Pb, 1.6 tons of Cd, 5,500 pounds of Hg and 78 grams of total CDD/CDF each year. Although we do not have sufficient information or modeling available to provide monetized estimates for this rulemaking, we include a qualitative assessment of the health effects of these air pollutants in the RIA for this proposed rule, which is available in the docket.

In addition, the monetized benefits estimates provided in Table 19 do not reflect the disbenefits associated with increased electricity and fuel consumption to operate the control devices. We estimate that the increases in emissions of CO_2 would have disbenefits valued at $0.5 million for the proposed option assuming that small entities landfill at a 3 percent discount rate. CO_2-related disbenefits were calculated using the social cost of carbon, which is discussed further in the RIA. However, these disbenefits do not change the rounded total monetized benefits of the proposed option, which are still $130 million to $320 million and $120 million to $290 million, at discount rates of 3 percent and 7 percent, respectively.

The social costs of this proposed rulemaking are estimated to be $92 million (2008$) in the implementation year and the monetized benefits including energy disbenefits are $130 million to $320 million (2008$, 3 percent discount rate) for that same year. The monetized benefits including energy disbenefits at a 7 percent discount rate are $120 million to $290 million (2008$). Thus, net benefits of this rulemaking including energy disbenefits estimated at $37 million to $220 million (2008$, 3 percent discount rate) and $26 million to $190 million (2008$, 7 percent discount rate).

VI. Relationship of the Proposed Action to CAA Sections 112(c)(3) and 112(k)(3)(B)(ii)

Clean Air Act sections 112(c)(3) and (k)(3)(B)(ii) instruct EPA to identify and list area source categories representing at least 90 percent of the emissions of the 30 "listed" HAP (64 FR 38706, July 19, 1999), that are, or will be, subject to standards under section 112(d) of the CAA. The 30 HAP are the result of emissions from area sources that pose the greatest threat to public health in the largest number of urban areas. Under the provisions of section 112(c)(3) and (k)(3)(B)(ii) of the CAA, SSI was added to the inventory. Each of the source categories added, including SSI, contributes a certain percentage of the total area source emissions for at least 1 of the 30 area source HAP and makes progress towards meeting our requirement to address 90 percent of the emissions of each of the 30 area source HAP.

As required by the statute, the CAA section 129 SSI standards include numeric emission limits for the 9 pollutants specified in section 129(a)(4) and opacity. The combination of wastewater pretreatment, good combustion practices and add-on air pollution control devices (e.g., FF, scrubbers, activated carbon injection, afterburners) effectively reduces emissions of the pollutants for which emission limits are required under CAA section 129: Cd, CO, CDD/CDF, HCl, Hg, Pb, NO_X, PM and SO_2.

Although, CAA section 129 standards for SSI will not set separate specific numerical emission limits for sections 112(c)(3) and (k)(3)(B)(ii) urban air HAP, the SSI standards will result in substantial reductions of 7–PAH, Cr, Mn, Ni, and PCB. These additional emission reductions are due to co-control of pollutants by the same air pollution control devices used to comply with the CAA section 129 SSI standard. Air pollution control devices are necessary to comply with the requirements of the SSI NSPS and EG. Add-on air pollution control devices to control PM will also reduce emissions of compounds that coalesce to form on PM (*e.g.,* Mn, Ni, Cr, etc.). The addition of any post-combustion device to control organics such as CO and CDD/CDF will also reduce emissions for any byproducts of incomplete combustion such as additional organic pollutants (*e.g.,* 7–PAH and PCB). The addition of wet scrubbers will also reduce emissions of compounds that are water soluble. Additionally, the NSPS emission limits will promote the construction of new FB incinerators rather than MH incinerators. Fluidized bed incinerators have significantly lower emissions of all organic compounds and NO_X.

While the proposed rule does not identify specific numerical emission limits for 7–PAH, Cr, Mn, Ni and PCB,

[24] Pope *et al.,* 2002. "Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution." Journal of the American Medical Association. 287:1132–1141.

[25] Laden *et al.,* 2006. "Reduction in Fine Particulate Air Pollution and Mortality." *American Journal of Respiratory and Critical Care Medicine.* 173: 667–672.

[26] U.S. Environmental Protection Agency, 2006. Final Regulatory Impact Analysis: $PM_{2.5}$ NAAQS. Prepared by Office of Air and Radiation. October. Available on the Internet at *http://www.epa.gov/ttn/ecas/ria.html.*

emissions of those pollutants are for the reasons noted above, nonetheless, subject to regulation for the purposes of section 112(c)(3) and (k)(3)(B)(ii) of the CAA. In lieu of establishing numerical emission limits for pollutants such as PCB and 7–PAH, CAA section 129 (a)(4) allows EPA to regulate surrogate substances. While we have not identified specific numerical limits for 7–PAH or PCB, we believe CO serves as an effective surrogate of those pollutants, because CO, like 7–PAH and PCB, is formed as a byproduct of combustion. We believe that CDD/CDF also serve as an effective surrogate for PCB, because the compounds act similarly and, thus, are expected to be controlled similarly using SSI emission control devices (*e.g.,* wet scrubbers, FF, activated carbon injection).

VII. Relationship of the Proposed Action to Other SSI Rules for the Use or Disposal of Sewage Sludge

Under authority of section 405(d) and (e) of the CWA, as amended 33 U.S.C.A. 1251, (*et seq.*), EPA promulgated regulations on February 19, 1993, at 40 CFR part 503 designed to protect public health and the environment from any reasonably anticipated adverse effects of certain pollutants that may be present in sewage sludge. The part 503 regulations establish requirements for the final use and disposal of sewage sludge when: (1) The sludge is applied to the land for a beneficial use (*e.g.,* for use in home gardens); (2) the sludge is disposed on land by placing it on surface disposal sites; and (3) the sewage sludge is incinerated. The standards apply to POTW that generate or treat domestic sewage sludge, as well as to any person who uses or disposes of sewage sludge from such treatment works.

The part 503 requirements for firing sewage sludge in a SSI are in subpart E of the regulations. Subpart E includes general requirements; pollutant limits; operational standards; management practices; and monitoring, recordkeeping, and reporting requirements.

These part 503 regulations require that SSI meet the National Emission Standards for Beryllium and Hg in subparts C and E, respectively, of 40 CFR part 61. The regulations also require that the allowable concentration of 5 other inorganic pollutants be calculated using equations in the regulation. The inorganic pollutants included are Pb, As, Cd, Cr, and Ni. The terms in the equations must be determined on a case-by-case basis, except for the risk-specific concentration for the inhalation exposure pathway to protect individuals when these pollutants are inhaled. The site-specific variables for the equations (incinerator type, dispersion factor, control efficiency, feed rate, and stack height) must be used to calculate allowable daily concentrations of As, Cd, Cr, Pb and Ni in the sewage sludge fed to the incinerator.

Also included in subpart E is an operational standard for THC. The value for THC in the final part 503 regulation cannot be exceeded in the exit gas from the SSI stack. Management practices and frequency of monitoring, recordkeeping, and reporting requirements are also included in this subpart.

Under today's proposed rule, EPA is establishing limits for 3 of the inorganic pollutants covered by the current part 503 regulations (Cd, Pb and Hg) and the following 7 additional pollutants: HCl, CO, opacity, NO_X, SO_2, PM, and total CDD/CDF. Besides the pollutants covered here, there are other differences between the part 503 regulations and this proposed rule. The emission limits for inorganic pollutants under part 503 are risk-based numbers rather than technology-based. Also, part 503 does not distinguish between new and existing units or between incinerator types (*i.e.,* MH or FB incinerator) for setting emission limits since emission limits are based on risks to a highly exposed individual.

Because both part 503 and this proposed rule cover the same universe of facilities, there are certain issues that arise in terms of potential impacts to current SSI facilities. First, we expect that the regulation of sewage sludge under CAA section 129 under the proposed rule would result in stricter emission standards than under the current CWA rule. Consequently, a potential impact of this rule is that some of the estimated 112 facilities that operate SSI as the primary means of disposal could discontinue this practice and would instead landfill their sewage sludge (see earlier discussion in section V of this preamble on the analysis of alternative sewage sludge disposal). Second, one must consider the available capacity of surface disposal sites to receive additional sewage sludge and the potential for added costs if the use of SSI is discontinued. Third, SSI would be subject to 2 different sets of requirements (numeric standards, operational standards, monitoring, recordkeeping, and reporting) under the 2 different statutes if the proposed rule is implemented, creating an additional burden to these facilities unless alternative regulatory approaches are implemented. EPA plans to evaluate the requirements under both statutes once this proposed rule is finalized to determine what changes, if any, should be made to the part 503 regulations. EPA requests comments on other potential impacts of this proposed rule on SSI.

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), this action is an "economically significant regulatory action" because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA submitted this action to the OMB for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared a RIA of the potential costs and benefits associated with this action.

When estimating the $PM_{2.5}$ and ozone-related human health benefits and compliance costs in Table 20 below, EPA applied methods and assumptions consistent with the State-of-the-science for human health impact assessment, economics, and air quality analysis. EPA applied its best professional judgment in performing this analysis and believes that these estimates provide a reasonable indication of the expected benefits and costs to the nation of this rule. The RIA available in the docket describes in detail the empirical basis for EPA's assumptions and characterizes the various sources of uncertainties affecting the estimates below.

When characterizing uncertainty in the PM-mortality relationship, EPA has historically presented a sensitivity analysis applying alternate assumed thresholds in the PM concentration-response relationship. In its synthesis of the current State of the PM science, EPA's "2009 Integrated Science Assessment (ISA) for Particulate Matter" concluded that a no-threshold log-linear model most adequately portrays the PM-mortality concentration-response relationship. In the RIA accompanying this rule, rather than segmenting out impacts predicted to be associated levels above and below a 'bright line' threshold, EPA includes a "LML" that illustrates the increasing uncertainty that characterizes exposure attributed to levels of $PM_{2.5}$ below the LML for each study. Figures provided in the RIA show the distribution of baseline exposure to $PM_{2.5,}$ as well as the lowest air quality levels measured in each of the epidemiology cohort studies. This

information provides a context for considering the likely portion of PM-related mortality benefits occurring above or below the LML of each study; in general, our confidence in the size of the estimated reduction $PM_{2.5}$-related premature mortality diminishes as baseline concentrations of $PM_{2.5}$ are lowered. Using the Pope, *et al.,* (2002) study, 85 percent of the population is exposed to annual mean $PM_{2.5}$ levels at or above the LML of 7.5 $\mu g/m^3$. Using the Laden, *et al.,* (2006) study, 40 percent of the population is exposed above the LML of 10 $\mu g/m^3$. While the LML analysis provides some insight into the level of uncertainty in the estimated PM mortality benefits, EPA does not view the LML as a threshold and continues to quantify PM-related mortality impacts using a full range of modeled air quality concentrations.

A summary of the monetized benefits, social costs and net benefits for the proposed option, as well as a less stringent option and more stringent option, at discount rates of 3 percent and 7 percent is in Table 18 of this preamble.

TABLE 20—SUMMARY OF THE MONETIZED BENEFITS, SOCIAL COSTS AND NET BENEFITS FOR NEW AND EXISTING SSI UNITS IN 2015

[Millions of 2008$] [1]

	3% Discount rate	7% Discount rate
Proposed: Option 2 MACT Floor and Beyond-the-Floor Controls for Hg and CDD/CDF		
Total Monetized Benefits [2]	$120 to $310	$110 to $280.
Total Social Costs [3]	$92	$92.
Net Benefits	$33 to $220	$23 to $190.
Non-monetized Benefits	2,900 tons of CO. 96 tons of HCl. 5,500 pounds of Hg. 1.6 tons of Cd. 3.0 tons of Pb. 90 grams of CDD/CDF. Health effects from NO_X and SO_2 exposure. Ecosystem effects. Visibility impairment.	
Option 1 MACT Floor		
Total Monetized Benefits [2]	$120 to $310	$110 to $280.
Total Social Costs [3]	$63	$63.
Net Benefits	$62 to $240	$52 to $220.
Non-monetized Benefits	2,900 tons of CO. 96 tons of HCl. 820 pounds of Hg. 1.6 tons of Cd. 3.0 tons of Pb. 74 grams of CDD/CDF. Health effects from NO_X and SO_2 exposure. Ecosystem effects. Visibility impairment.	
Option 3 MACT Floor, Beyond-the-Floor Controls for Hg and CDD/CDF, and Beyond-the-Floor Controls for CO		
Total Monetized Benefits [2]	$120 to $300	$110 to $280.
Total Social Costs [3]	$132	$132.
Net Benefits	−$9.6 to $170	−$18 to $150.
Non-monetized Benefits	26,000 tons of CO. 96 tons of HCl. 5,500 pounds of Hg. 1.6 tons of Cd. 3.0 tons of Pb. 90 grams of CDD/CDF. Health effects from NO_X and SO_2 exposure. Ecosystem effects. Visibility impairment.	

[1] All estimates are for the implementation year (2015) and are rounded to 2 significant figures. These results include 2 new FB incinerators anticipated to come on-line by 2015 and the assumption that small entities will landfill.

[2] The total monetized benefits reflect the human health benefits associated with reducing exposure to $PM_{2.5}$ through reductions of directly emitted $PM_{2.5}$ and $PM_{2.5}$ precursors such as NO_X and SO_2. It is important to note that the monetized benefits include many but not all health effects associated with $PM_{2.5}$ exposure. Benefits are shown as a range from Pope, *et al.,* (2002) to Laden, *et al.,* (2006). These models assume that all fine particles, regardless of their chemical composition, are equally potent in causing premature mortality because there is no clear scientific evidence that would support the development of differential effects estimates by particle type. These results include 2 new FB incinerators anticipated to come online by 2015, as well as energy disbenefits of $4.5 to $9.7 million.

[3] The methodology used to estimate social costs for 1 year in the multimarket model using surplus changes results in the same social costs for both discount rates.

For more information on the benefits analysis, please refer to the RIA for this rulemaking, which is available in the docket.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the OMB under the PRA, 44 U.S.C. 3501 *et seq.* The ICR documents prepared by EPA have been assigned EPA ICR number 2369.01 for subpart LLLL, and 2403.01 for subpart MMMM.

The recordkeeping and reporting requirements in this proposed rule would be based on the information collection requirements in CAA section 129 and EPA's NSPS General Provisions (40 CFR part 60, subpart A). The recordkeeping and reporting requirements in the General Provisions are mandatory pursuant to CAA section 114 (42 U.S.C. 7414). All information other than emissions data submitted to EPA pursuant to the information collection requirements for which a claim of confidentiality is made is safeguarded according to CAA section 114(c) and EPA's implementing regulations at 40 CFR part 2, subpart B.

The requirements in this proposed action result in industry recordkeeping and reporting burden associated with review of the amendments for all SSI and initial and annual compliance with the emission limits using EPA approved emissions test methods. The burden also includes continuous parameter monitoring and annual inspections of air pollution control devices that may be used to meet the emission limits. Operators are required to obtain qualification and complete annual training. New units are also required to submit a report prior to construction, including a siting analysis.

The annual average burden associated with the EG over the first 3 years following promulgation of this proposed action is estimated to be $14.2 million. This includes 21,900 hours at a total annual labor cost of $1.2 million and total annualized capital/startup and O&M costs of $13 million per year, associated with the monitoring requirements, storage of data and reports and photocopying and postage over the 3-year period of the ICR. The annual inspection costs are included under the recordkeeping and reporting labor costs.

The annual average burden associated with the NSPS over the first 3 years following promulgation of this proposed action is estimated to involve 518 hours at a total annual labor cost of $29,000. The total annualized capital/startup costs are estimated at $292,000 per year. This gives a cumulative annual burden of $321,000 per year for the NSPS. 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 currently displays a valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2009–0559. 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 October 14, 2010, a comment to OMB is best assured of having its full effect if OMB receives it by November 15, 2010. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of this proposed action on small entities, a small entity is defined as follows: (1) A small business as defined by the SBA regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently-owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. None of the 18 small entities has cost-revenue-ratios greater than 1 percent. Thus, this is not considered to be a significant impact.

Although the proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities by allowing optional CEMS instead of requiring them, allowing information from tests conducted in recent years to show compliance rather than require all new testing and allowing reduced testing with continued compliance.

D. Unfunded Mandates Reform Act

Title II of the UMRA of 1995, 2 U.S.C. 1531–1538, requires Federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule contains a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, EPA has prepared under section 202 of the UMRA a written statement that is summarized in this section of the preamble. A copy of the UMRA written statement can be found in the docket. The UMRA written statement further describes EPA's statutory authority, a qualitative and quantitative cost-benefits assessment, and a description of the extent of EPA's prior consultation with elected representatives (or their designated authorized employees) of the affected State, local, and tribal governments, and a summary of their oral or written comments and concerns and EPA's evaluation of them.

EPA's statutory authority for this action is contained in CAA section 129, as described in section II.C of this preamble and in the UMRA written statement in the docket. These emission standards are also needed as part of EPA's fulfillment of its obligations under CAA section 112(c)(3) and (k)(3)(B)(ii). Regarding the cost-benefits assessment, the RIA prepared for the proposed rule, including the EPA's assessment of costs and benefits, is detailed in the "Regulatory Impact Analysis: Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units" in the docket. Based on estimated compliance costs associated with the proposed rule and the predicted change in prices and production in the affected industries, the estimated social costs of the proposed rule are $92 million (2008$). The estimated costs account for 18 small

entities choosing alternative disposal methods to SSI.

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA has initiated consultations with governmental entities affected by this proposed rule. EPA invited 10 organizations of elected State and local officials who have been identified by EPA as the "Big 10" organizations appropriate to contact for purposes of consultation with elected officials. The following national organizations representing State and local officials attended a meeting held on May 27, 2010, in Washington, DC: (1) National Governors' Association, (2) National Conference of State Legislatures, (3) National League of Cities, (4) U.S. Conference of Mayors, (5) National Association of Counties, (6) Association of State and Territorial Solid Waste Management Officials, (7) Council of State Governments and (8) Environmental Council of the States, to inform them and seek their input for this rulemaking. Two of the Big 10 organizations were unable to attend. Additionally, the National Association of Clean Water Agencies, the National Association of Clean Air Agencies and the Association of State and Interstate Water Pollution Control Administrators participated, to serve as technical advisors to the national organizations during this consultation.

The purpose of the consultation was to provide general background on the proposal, answer questions, and solicit input from State and local governments. Prior to the meeting, EPA provided the officials with a copy of the SSI inventory and presentation. During the meeting, officials expressed uncertainty with regards to how EPA calculated the costs to comply with the standard. Officials also expressed uncertainty with regards to how viable the alternative to the standard is with respect to small governments and entities located in certain geographic regions. Technical memoranda, which can be found in the docket, document EPA's cost analysis, beyond-the-floor options, and the regulatory impacts analysis. EPA determined that the alternative to the standard is a viable option for some entities.

Consistent with section 205 of the UMRA, EPA has identified and considered a reasonable number of regulatory alternatives. Incineration continues to be used to dispose of sewage sludge, but is increasingly becoming less common. Additional pollution controls will increase costs for facilities that continue to use the incineration disposal method. If the additional costs are high enough, many POTW may choose to adopt alternative disposal methods (*e.g.,* surface disposal in landfills or other beneficial land applications). However, the use of alternative disposal methods may be limited in some areas because of landfill capacity constraints, local geography, or other legal or economic constraints.

One alternative option is landfilling. Landfilling, in some cases, provides a simple and low-cost option for sewage sludge disposal. Sewage sludge may be placed in landfills used for other municipal solid waste or in landfills constructed specifically for sewage sludge. The landfill disposal option is attractive for low-volume incinerators; landfill capacity constraints limit disposal opportunities for large sludge volumes.

Land application is a second alternative. Sewage sludge that has undergone treatment to make it safe for use on other land application (*e.g.,* fertilizer) is commonly referred to as biosolids. Biosolids can be sold to agricultural or landscaping entities for land application, so the organic material in biosolids is reused to contribute to crop production. Land application has also been used in mine reclamation to re-establish vegetation.

Further analysis can be found in the "Regulatory Impacts Analysis." The regulatory alternative selected is landfilling. EPA recognizes that the landfilling option may be utilized by some facilities but not all depending on a number of factors such as cost, geographic location, and State regulations.

This proposed rule is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. While some small governments may have SSI units that would be affected by this rule, EPA's analysis shows that for the more likely scenario that small governmental entities switch to landfilling, none of the ratios was greater than 1 percent. Because the proposed rule's requirements apply equally to SSI units owned and/or operated by governments or SSI units owned and/or operated by private entities, there would be no requirements that uniquely apply to such government or impose any disproportionate impacts on them.

E. Executive Order 13132: Federalism

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

This proposed rule will have federalism implications, as defined by Agency guidance for implementing the Order, due to substantial direct compliance costs on State or local governments. As specified by the Order, EPA must consult with elected State and local government officials, or their representative national organizations, when developing regulations and policies that impose substantial compliance costs on State and local governments. Pursuant to Agency policy, EPA conducted a briefing for the Big 10 intergovernmental organizations representing elected State and local government officials, to formally request their comments and input on the action. Please reference the UMRA discussion above for further details regarding the Big 10 consultation.

The Big 10 is currently in the process of providing EPA with feedback on its proposed standards and EG for SSI units. 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 rule from State and local officials.

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

This action does not have tribal implications, as specified in Executive Order 13175, (65 FR 67249, November 9, 2000). EPA is not aware of any SSI owned or operated by Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials in the proposal period via the National Tribal Air Association and other mechanisms.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to Executive Order

13045 because it is based solely on technology performance. We note however, that reductions in air emissions by these facilities will improve air quality, with expected positive impacts for children's health.

H. 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. EPA estimates that the requirements in this proposed action would cause most SSI to modify existing air pollution control devices (*e.g.,* increase the horsepower of their wet scrubbers) or install and operate new control devices, resulting in approximately 29,200 megawatt-hours per year of additional electricity being used.

Given the negligible change in energy consumption resulting from this proposed action, EPA does not expect any significant price increase for any energy type. The cost of energy distribution should not be affected by this proposed action at all since the action would not affect energy distribution facilities. We also expect that any impacts on the import of foreign energy supplies, or any other adverse outcomes that may occur with regards to energy supplies, would not be significant. We, therefore, conclude that if there were to be any adverse energy effects associated with this proposed action, they would be minimal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the NTTAA of 1995, Public Law 104–113 (15 U.S.C. 272 note) directs EPA to use VCS in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

EPA conducted searches for the "Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Sewage Sludge Incineration Units" through the Enhanced National Standards Service Network Database managed by the ANSI. We also contacted VCS organizations and accessed and searched their databases.

This rulemaking involves technical standards. EPA has decided to use ANSI/ASME PTC 19.10–1981, "Flue and Exhaust Gas Analyses," for its manual methods of measuring the oxygen or carbon dioxide content of the exhaust gas. These parts of ASME PTC 19.10–1981 are acceptable alternatives to EPA Methods 6, 7. This standard is available from the ASME, Three Park Avenue, New York, NY 10016–5990.

Another VCS, ASTM D6784–02, "Standard Test Method for Elemental, Oxidized, Particle-Bound and Total Mercury Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method)" is an acceptable alternative to Method 29 and 30B. The EPA has also decided to use EPA Methods 5, 6, 6C, 7, 7E, 9, 10, 10A, 10B, 22, 23, 26A, 29 and 30B. No VCS were found for EPA Method 9 and 22.

During the search, if the title or abstract (if provided) of the VCS described technical sampling and analytical procedures that are similar to EPA's reference method, the EPA ordered a copy of the standard and reviewed it as a potential equivalent method. All potential standards were reviewed to determine the practicality of the VCS for this rule. This review requires significant method validation data which meets the requirements of EPA Method 301 for accepting alternative methods or scientific, engineering and policy equivalence to procedures in EPA reference methods. The EPA may reconsider determinations of impracticality when additional information is available for particular VCS.

The search identified 23 other VCS that were potentially applicable for this rule in lieu of EPA reference methods. After reviewing the available standards, EPA determined that 23 candidate VCS (ASME B133.9–1994 (2001), ISO 9096:1992 (2003), ANSIIASME PTC PTC¬38–1980 (1985), ASTM D3685/ D3685M–98 (2005), CAN/CSA Z223.1–M1977, ANSIIASME PTC 19–10–1981, ISO 10396:1993 (2007), ISO 12039:2001, ASTM D5835–95 (2007), ASTM D6522–00 (2005), CAN/CSA Z223.2–M86 (1999), ISO 7934:1998, ISO 11632:1998, ASTM D1608–98 (2003), ISO I1564:1998, CAN/CSA Z223.24–MI983, CAN/CSA Z223.21–MI978, ASTM D3162–94 (2005), EN 1948–3 (1996), EN 1911–1,2,3 (1998), ASTM D6735–01, EN 13211:2001, CAN/CSA Z223.26–MI987) identified for measuring emissions of pollutants or their surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data, and other important technical and policy considerations.

Under 40 CFR 60.13(i) of the NSPS General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any required testing methods, PS, or procedures in the final rule and any amendments.

EPA welcomes comments on this aspect of the proposed rulemaking and specifically invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on EJ. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make EJ part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income populations. Additionally, the Agency has reviewed this proposed rule to determine if there was existing disproportionately high and adverse human health or environmental effects on minority or low-income populations that could be mitigated by this rulemaking. An analysis of demographic data showed that the average of populations in close proximity to the sources, and thus most likely to be effected by the sources, were similar in demographic composition to national averages.

In determining the aggregate demographic makeup of the communities near affected sources, EPA used census data at the block group level to identify demographics of the populations considered to be living near affected sources, such that they have notable exposures to current emissions from these sources. In this approach, EPA reviewed the distributions of

different socio-demographic groups in the locations of the expected emission reductions from this rule. The review identified those census block groups within a circular distance of a half, 3, and 5 miles of affected sources and determined the demographic and socio-economic composition (*e.g.,* race, income, education, etc.) of these census block groups. The radius of 3 miles (or approximately 5 kilometers) has been used in other demographic analyses focused on areas around potential sources.[27–30] EPA's demographic analysis has shown that these areas in aggregate have similar proportions of American Indians, African-Americans, Hispanics, Whites, and "Other and Multi-racial" populations, and similar proportions of families with incomes below the poverty level as the national average.[31]

This proposed action establishes national emission standards for new and existing SSI units. The EPA estimates that there are approximately 218 such units covered by this rule. The proposed rule will reduce emissions of all the listed HAP emitted from this source. This includes emissions of Cd, HCl, Pb, Hg, and CDD/CDF. Adverse health effects from these pollutants include cancer, irritation of the lungs, skin and mucus membranes, effects on the central nervous system and damage to the kidneys and acute health disorders. The rule will also result in substantial reductions of criteria pollutants such as CO, NO_X, PM and $PM_{2.5}$ and SO_2. Sulfur dioxide and NO_X are precursors for the formation of $PM_{2.5}$ and ozone. Reducing these emissions will reduce ozone and $PM_{2.5}$ formation and associated health effects, such as adult premature mortality, chronic and acute bronchitis, asthma and other respiratory and cardiovascular diseases. For additional information, please refer to the RIA contained in the docket for this rulemaking. EPA defines "Environmental Justice" to include meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. To promote meaningful involvement, EPA has developed a communication and outreach strategy to ensure that interested communities have access to this proposed rule, are aware of its content and have an opportunity to comment during the comment period. During the comment period, EPA will publicize the rulemaking via EJ newsletters, tribal newsletters, EJ listservs, and the Internet, including the OPEI Rulemaking Gateway Web site (*http://yosemite.epa.gov/opei/RuleGate.nsf/*). EPA will also provide general rulemaking fact sheets (*e.g.,* why is this important for my community) for EJ community groups and conduct conference calls with interested communities. In addition, State and Federal permitting requirements will provide State and local governments and members of affected communities the opportunity to provide comments on the permit conditions associated with permitting the sources affected by this rulemaking.

[27] U.S. GAO (Government Accountability Office). *Demographics of People Living Near Waste Facilities.* Washington, DC: Government Printing Office; 1995.

[28] Mohai P, Saha R. "Reassessing Racial and Socio-economic Disparities in Environmental Justice Research." *Demography.* 2006;43(2): 383–399.

[29] Mennis J. "Using Geographic Information Systems to Create and Analyze Statistical Surfaces of Populations and Risk for Environmental Justice Analysis." *Social Science Quarterly,* 2002;83(1):281–297.

[30] Bullard RD, Mohai P, Wright B, Saha R, *et al. Toxic Waste and Race at Twenty 1987–2007.* United Church of Christ. March 2007.

[31] The results of the demographic analysis are presented in "Review of Environmental Justice Impacts," June 2010, a copy of which is available in the docket.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 30, 2010.

Lisa Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of the Code of Federal Regulations, is proposed to be amended as follows:

PART 60—[AMENDED]

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

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

2. Part 60 is amended by adding subparts LLLL and MMMM to read as follows:

Subpart LLLL—Standards of Performance for New Sewage Sludge Incineration Units

Sec.

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Introduction

§ 60.4760 What does this subpart do?

This subpart establishes new source performance standards for sewage sludge incineration (SSI) units. To the extent any requirement of this subpart is inconsistent with the requirements of subpart A of this part, the requirements of this subpart will apply.

§ 60.4765 When does this subpart become effective?

This subpart takes effect on [THE DATE 6 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**]. Some of the requirements in this subpart apply to planning an SSI unit and must be completed even before construction is initiated on an SSI unit (*i.e.,* the preconstruction requirements in §§ 60.4800 and 60.4805). Other requirements such as the emission limits, emission standards, and operating limits apply after the SSI unit begins operation.

Applicability and Delegation of Authority

§ 60.4770 Does this subpart apply to my sewage sludge incineration unit?

Yes, your SSI unit is an affected source if it meets all the criteria specified in paragraphs (a) through (c) of this section.

(a) Your SSI unit is an SSI unit for which construction commenced after October 14, 2010 or for which modification commenced after [THE DATE 6 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(b) Your SSI unit is an SSI unit as defined in § 60.4930.

(c) Your SSI unit is not exempt under § 60.4780.

§ 60.4775 What is a new sewage sludge incineration unit?

(a) A new SSI unit is an SSI unit that meets either of the two criteria specified in paragraph (a)(1) or (a)(2) of this section.

(1) Commenced construction after October 14, 2010.

(2) Commenced modification after [THE DATE 6 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(b) Physical or operational changes made to your SSI unit to comply with the emission guidelines in subpart MMMM of this part (Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units) do not qualify as a modification under this subpart.

§ 60.4780 What sewage sludge incineration units are exempt from this subpart?

This subpart exempts combustion units that incinerate sewage sludge that are located at an industrial or commercial facility subject to subpart CCCC of this part, provided the owner or operator of such a combustion unit notifies the Administrator of an exemption claim under this section.

§ 60.4785 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the Administrator, as defined in § 60.2, or a delegated authority such as your State, local, or tribal agency. If the Administrator has delegated authority to your State, local, or tribal agency, then that agency (as well as the Administrator) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency, the authorities contained in paragraph (c) of this section are retained by the Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (c)(1) through (8) of this section.

(1) Approval of alternatives to the emission limits and standards in Table 1 to this subpart and operating limits established under § 60.4850.

(2) Approval of major alternatives to test methods.

(3) Approval of major alternatives to monitoring.

(4) Approval of major alternatives to recordkeeping and reporting.

(5) The requirements in § 60.4855.

(6) The requirements in § 60.4835(b)(2).

(7) Performance test and data reduction waivers under § 60.8(b).

(8) Preconstruction siting analysis in § 60.4800 and § 60.4805.

§ 60.4790 How are these new source performance standards structured?

These new source performance standards contain the nine major components listed in paragraphs (a) through (i) of this section.

(a) Preconstruction siting analysis.

(b) Operator training and qualification.

(c) Emission limits, emission standards, and operating limits.

(d) Initial compliance requirements.

(e) Continuous compliance requirements.

(f) Performance testing, monitoring, and calibration requirements.

(g) Recordkeeping and reporting.

(h) Definitions.

(i) Tables.

§ 60.4795 Do all nine components of these new source performance standards apply at the same time?

No. You must meet the preconstruction siting analysis requirements before you commence construction of the SSI unit. The operator training and qualification, emission limits, emission standards, operating limits, performance testing, and compliance, monitoring, and most recordkeeping and reporting requirements are met after the SSI unit begins operation.

Preconstruction Siting Analysis

§ 60.4800 Who must prepare a siting analysis?

(a) You must prepare a siting analysis if you plan to commence construction of an SSI unit after October 14, 2010.

(b) You must prepare a siting analysis if you are required to submit an initial application for a construction permit under 40 CFR part 51, subpart I, or 40 CFR part 52, as applicable, for the modification of your SSI unit.

§ 60.4805 What is a siting analysis?

(a) The siting analysis must consider air pollution control alternatives that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to public health or the environment, including impacts of the affected SSI unit on ambient air quality, visibility, soils, and vegetation. In considering such alternatives, the analysis may consider costs, energy impacts, nonair environmental impacts, or any other factors related to the practicability of the alternatives.

(b) Analyses of your SSI unit's impacts that are prepared to comply with State, local, or other Federal regulatory requirements may be used to satisfy the requirements of this section, provided they include the consideration of air pollution control alternatives specified in paragraph (a) of this section.

(c) You must complete and submit the siting requirements of this section as required under § 60.4915(a)(3) prior to commencing construction.

Operator Training and Qualification

§ 60.4810 What are the operator training and qualification requirements?

(a) An SSI unit cannot be operated unless a fully trained and qualified SSI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified SSI unit operator may operate the SSI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified SSI unit operators are temporarily not accessible, you must follow the procedures in § 60.4835.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the 10 subjects listed in paragraphs (c)(1)(i) through (x) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, sewage sludge feeding, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (if applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to prevent malfunctions or to prevent conditions that may lead to malfunctions.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(2) An examination designed and administered by the State-approved program.

(3) Written material covering the training course topics that may serve as reference material following completion of the course.

§ 60.4815 When must the operator training course be completed?

The operator training course must be completed by the later of the two dates specified in paragraphs (a) and (b) of this section.

(a) Six months after your SSI unit startup.

(b) The date before an employee assumes responsibility for operating the SSI unit or assumes responsibility for supervising the operation of the SSI unit.

§ 60.4820 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 60.4810(b).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 60.4810(c)(2).

§ 60.4825 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, sewage sludge feeding, and ash handling.

(c) Inspection and maintenance.

(d) Prevention of malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 60.4830 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 60.4825.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 60.4820(a).

§ 60.4835 What if all the qualified operators are temporarily not accessible?

If a qualified operator is not at the facility and cannot be at the facility within 1 hour, you must meet the criteria specified in either paragraph (a) or (b) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When a qualified operator is not accessible for more than 8 hours, the SSI unit may be operated for less than 2 weeks by other plant personnel who are familiar with the operation of the SSI unit who have completed a review of the information specified in § 60.4840 within the past 12 months. However, you must record the period when a qualified operator was not accessible and include this deviation in the annual report as specified under § 60.4915(d).

(b) When a qualified operator is not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, State what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible, and requesting approval from the Administrator to continue operation of the SSI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section.

(i) If the Administrator notifies you that your request to continue operation of the SSI unit is disapproved, the SSI unit may continue operation for 30 days, and then must cease operation.

(ii) Operation of the unit may resume if a qualified operator is accessible as required under § 60.4810(a) and you notify the Administrator within 5 days of having resumed operations and of having a qualified operator accessible.

§ 60.4840 What site-specific documentation is required and how often must it be reviewed by qualified sewage sludge incineration unit operators and other plant personnel who may operate the unit according to the provisions of § 60.4835(a)?

(a) You must maintain at the facility the documentation of the operator training procedures specified under § 60.4910(c)(1) and make the documentation readily accessible to all SSI unit operators.

(b) You must establish a program for reviewing the information listed in § 60.4910(c)(1) with each qualified incinerator operator and other plant personnel who may operate the unit according to the provisions of § 60.4835(a), according to the following schedule:

(1) The initial review of the information listed in § 60.4910(c)(1) must be conducted within 6 months after the effective date of this subpart or prior to an employee's assumption of responsibilities for operation of the SSI unit, whichever date is later.

(2) Subsequent annual reviews of the information listed in § 60.4910(c)(1) must be conducted no later than 12 months following the previous review.

Emission Limits, Emission Standards, and Operating Limits

§ 60.4845 What emission limits and standards must I meet and by when?

You must meet the emission limits and standards specified in Table 1 to this subpart within 60 days after your SSI unit reaches the feed rate at which it will operate or within 180 days after its initial startup, whichever comes first. The emission limits and standards apply at all times the unit is operating, including, and not limited to, periods of startup, shutdown, and malfunction. The emission limits and standards apply to emissions from a bypass stack or vent while sewage sludge is being charged to the SSI unit.

§ 60.4850 What operating limits must I meet and by when?

You must meet the operating limits specified in paragraphs (a) through (c) of this section, according to the schedule specified in paragraphs (d) and (e) of this section. The operating parameters are listed in Table 2 to this subpart. The operating limits apply at all times the unit is charging sewage sludge, including periods of malfunction.

(a) You must meet site-specific operating limits for maximum dry sludge feed rate, sludge moisture content, and minimum temperature of the combustion chamber (or afterburner combustion chamber) that you establish in § 60.4870.

(b) If you use a wet scrubber, electrostatic precipitator, or activated carbon injection to comply with an emission limit, you must meet the site-specific operating limits that you establish in § 60.4870 for each operating parameter associated with each air pollution control device.

(c) If you use a fabric filter to comply with the emission limits, you must install the bag leak detection system specified in § 60.4905(b)(3)(i) and operate the bag leak detection system such that the alarm does not sound more than 5 percent of the operating time during a 6-month period. You must calculate the alarm time as specified in § 60.4870.

(d) You must meet the operating limits specified in paragraphs (a) through (c) of this section 60 days after your SSI unit reaches the feed rate at which it will operate, or within 180 days after its initial startup, whichever comes first.

(e) For the operating limits specified in paragraphs (a) and (b) of this section, you may conduct a repeat performance test at any time to establish new values for the operating limits to apply from that point forward. You must confirm or reestablish operating limits during:

(1) Annual performance tests required under § 60.4885(a).

(2) Performance tests required under § 60.4885(a)(2).

(3) Periodic performance evaluations required under § 60.4885(b)(6) to meet the operating limits specified in paragraph (a) of this section.

§ 60.4855 How do I establish operating limits if I do not use a wet scrubber, fabric filter, electrostatic precipitator, or activated carbon injection, or if I limit emissions in some other manner, to comply with the emission limits?

If you use an air pollution control device other than a wet scrubber, fabric filter, electrostatic precipitator, or activated carbon injection, or limit emissions in some other manner (*e.g.,* materials balance) to comply with the emission limits in § 60.4845, you must meet the requirements in paragraphs (a) and (b) of this section.

(a) Establish an operating limit each for maximum dry sludge feed rate, sludge moisture content, and minimum temperature of the combustion chamber (or afterburner combustion chamber) according to § 60.4870.

(b) Petition the Administrator for specific operating parameters, operating limits, and averaging periods to be established during the initial performance test and to be monitored continuously thereafter.

(1) You must not conduct the initial performance test until after the petition has been approved by the Administrator, and you must comply with the operating limits as written, pending approval by the Administrator.

(2) Your petition must include the five items listed in paragraphs (b)(2)(i) through (v) of this section.

(i) Identification of the specific parameters you propose to monitor.

(ii) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(iii) A discussion of how you will establish the upper and/or lower values for these parameters that will establish the operating limits on these parameters, including a discussion of the averaging periods associated with those parameters for determining compliance.

(iv) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(v) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 60.4860 Do the emission limits, emission standards, and operating limits apply during periods of startup, shutdown, and malfunction?

The emission limits and standards apply at all times, including periods of startup, shutdown, and malfunction. The operating limits apply at all times the unit is charging sewage sludge, including periods of malfunction.

§ 60.4861 How do I establish an affirmative defense for exceedance of an emission limit or standard during malfunction?

In response to an action to enforce the standards set forth in paragraph § 60.4845 you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined in § 60.2. Appropriate penalties may be assessed; however, if the respondent

fails to meet its burden of proving all of the requirements in the affirmative defense, then the affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that the conditions in paragraphs (a)(1) through (9) of this section are met.

(1) The excess emissions meet the conditions in paragraphs (a)(1)(i) through (iv) of this section.

(i) Were caused by a sudden, short, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner.

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices.

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for.

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Offshift and overtime labor were used, to the extent practicable to make these repairs.

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions.

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, severe personal injury, or severe property damage.

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health.

(6) All emissions monitoring and control systems were kept in operation if at all possible.

(7) Your actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs.

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions.

(9) You have prepared a written root cause analysis to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) If your SSI unit experiences an exceedance of its emission limit(s) during a malfunction, you must notify the Administrator by telephone or facsimile (fax) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if you wish to avail yourself of an affirmative defense to civil penalties for that malfunction. If you seek to assert an affirmative defense, you must also submit a written report to the Administrator within 30 days of the initial occurrence of the exceedance of the standard in § 60.4845 to demonstrate, with all necessary supporting documentation, that you have met the requirements set forth in paragraph (a) of this section.

Initial Compliance Requirements

§ 60.4865 How and when do I demonstrate initial compliance with the emission limits and standards?

To demonstrate initial compliance with the emission limits and standards in Table 1 to this subpart, use the procedures specified in paragraph (a) of this section for particulate matter, hydrogen chloride, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, opacity, and fugitive emissions from ash handling, and follow the procedures specified in paragraph (b) of this section for carbon monoxide. In lieu of using the procedures specified in paragraph (a) of this section, you also have the option to demonstrate initial compliance using the procedures specified in paragraph (b) of this section for particulate matter, hydrogen chloride, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and opacity. You must meet the requirements of paragraphs (a) or (b) of this section, as applicable, and paragraphs (c) and (d) of this section, according to the performance testing, monitoring, and calibration requirements in § 60.4900(a) and (b). Except as provided in paragraph (e) of this section, within 60 days after your SSI unit reaches the feed rate at which it will operate, or within 180 days after its initial startup, whichever comes first, you must demonstrate that your SSI unit meets the emission limits and standards specified in Table 1 to this subpart.

(a) Demonstrate initial compliance using the performance test required in § 60.8. You must demonstrate that your SSI unit meets the emission limits and standards specified in Table 1 to this subpart for particulate matter, hydrogen chloride, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, opacity, and fugitive emissions from ash handling using the performance test. The initial performance test must be conducted using the test methods, averaging methods, and minimum sampling volumes or durations specified in Table 1 to this subpart and according to the testing, monitoring, and calibration requirements specified in § 60.4900(a).

(b) Demonstrate initial compliance using a continuous emissions monitoring system, continuous opacity monitoring system, or continuous automated sampling system. Collect data as specified in § 60.4900(b)(6) and use the following procedures:

(1) To demonstrate initial compliance with the carbon monoxide emission limit, you must use the carbon monoxide continuous emissions monitoring system specified in § 60.4900(b).

(2) To demonstrate initial compliance with the emission limits for particulate matter, hydrogen chloride, dioxins/furans total mass, dioxins/furans toxic equivalency, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and opacity, you may substitute the use of a continuous monitoring system in lieu of conducting the initial performance test required in paragraph (a) of this section, as follows:

(i) You may substitute the use of a continuous emissions monitoring system for any pollutant specified in paragraph (b)(2) of this section (except opacity) in lieu of conducting the initial performance test for that pollutant in paragraph (a) of this section.

(ii) If your SSI unit is not equipped with a wet scrubber, you may substitute the use of a continuous opacity monitoring system in lieu of conducting the initial opacity and particulate matter performance tests in paragraph (a) of this section.

(iii) You may substitute the use of a continuous particulate matter monitoring system in lieu of conducting the initial opacity performance test in paragraph (a) of this section.

(iv) You may substitute the use of a continuous automated sampling system for mercury or dioxins/furans in lieu of conducting the initial mercury or dioxin/furan performance test in paragraph (a) of this section.

(3) If you use a continuous emissions monitoring system to demonstrate compliance with an applicable emission limit in paragraph (b)(1) or (2) of this section, you must use the continuous emissions monitoring system and follow the requirements specified in

§ 60.4900(b). You must measure emissions according to § 60.13 to calculate 1-hour arithmetic averages, corrected to 7 percent oxygen (or carbon dioxide). You must demonstrate initial compliance using a 24-hour block average of these 1-hour arithmetic average emission concentrations, calculated using Equation 19–19 in section 12.4.1 of Method 19 of 40 CFR part 60, appendix A–7.

(4) If you use a continuous automated sampling system to demonstrate compliance with an applicable emission limit in paragraph (b)(2) of this section, you must:

(i) Use the continuous automated sampling system specified in § 60.58b(p) and (q), and measure and calculate average emissions corrected to 7 percent oxygen (or carbon dioxide) according to § 60.58b(p) and your monitoring plan.

(A) Use the procedures specified in § 60.58b(p) to calculate 24-hour averages to determine compliance with the mercury emission limit in Table 1 to this subpart.

(B) Use the procedures specified in § 60.58b(p) to calculate 2-week averages to determine compliance with the dioxin/furan emission limits in Table 1 to this subpart.

(ii) Comply with the provisions in § 60.58b(q) to develop a monitoring plan. For mercury continuous automated sampling systems, you must use Performance Specification 12B of appendix B of part 75 and Procedure 1 of appendix F of this part.

(5) If you use a continuous opacity monitoring system to demonstrate compliance with an applicable emission or opacity limit in paragraph (b)(2) of this section, you must use the continuous opacity monitoring system and follow the requirements specified in § 60.4900(b). You must measure emissions and calculate 6-minute averages as specified in § 60.13(h)(1). Using these 6-minute averages, you must calculate 1-hour block average opacity values. You must demonstrate initial compliance using the arithmetic average of three 1-hour block averages.

(6) Except as provided in paragraph (e) of this section, you must complete your initial performance evaluations required under your monitoring plan for any continuous emissions monitoring system, continuous opacity monitoring systems, and continuous automated sampling systems no later than 60 days after the date of initial startup of the affected SSI unit, as specified under § 60.8. Your performance evaluation must be conducted using the procedures and acceptance criteria specified in § 60.4880(a)(3).

(c) To demonstrate initial compliance with the dioxins/furans toxic equivalency emission limit in either paragraph (a) or (b) of this section, you must determine dioxins/furans toxic equivalency as follows:

(1) Measure the concentration of each dioxin/furan tetra-through octachlorinated-congener emitted using Method 23 at 40 CFR part 60, appendix A–7.

(2) For each dioxin/furan (tetra-through octachlorinated) congener measured in accordance with paragraph (c)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 to this subpart.

(3) Sum the products calculated in accordance with paragraph (c)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

(d) You must submit an initial compliance report, as specified in § 60.4915(c).

(e) If you demonstrate initial compliance using a performance test as specified in paragraph (a) of this section, then the provisions of this paragraph (e) apply. If a force majeure is about to occur, occurs, or has occurred for which you intend to assert a claim of force majeure, you must notify the Administrator in writing as specified in § 60.4915(g). You must conduct the initial performance test as soon as practicable after the force majeure occurs. The Administrator will determine whether or not to grant the extension to the initial performance test deadline, and will notify you in writing of approval or disapproval of the request for an extension as soon as practicable. Until an extension of the performance test deadline has been approved by the Administrator, you remain strictly subject to the requirements of this subpart.

§ 60.4870 How do I establish my operating limits?

(a) You must establish the site-specific operating limits specified in paragraphs (c) through (k) of this section during the initial performance tests and performance evaluations required in § 60.4865 and the most recent performance tests and performance evaluations required in § 60.4885. Follow the data measurement and recording frequencies and data averaging times specified in Table 2 to this subpart and follow the testing, monitoring, and calibration requirements specified in §§ 60.4900 and 60.4905. You are not required to establish operating limits for the operating parameters listed in Table 2 to this subpart for a control device if you use a continuous monitoring system to demonstrate compliance with the emission limits in Table 1 to this subpart for the applicable pollutants, as follows:

(1) For a scrubber designed to control emissions of hydrogen chloride and sulfur dioxide, you are not required to establish an operating limit and monitor pressure drop across the scrubber (or amperage to the scrubber), scrubber liquor flow rate, and scrubber pH if you use the continuous monitoring system specified in §§ 60.4865(b) and 60.4885(b) to demonstrate compliance with the emission limit for hydrogen chloride or sulfur dioxide.

(2) For a scrubber designed to control emissions of particulate matter, cadmium, and lead, you are not required to establish an operating limit and monitor pressure drop across the scrubber (or amperage to the scrubber), scrubber liquor flow rate, and scrubber pH if you use the continuous monitoring system specified in §§ 60.4865(b) and 60.4885(b) to demonstrate compliance with the emission limit for particulate matter, cadmium, or lead.

(3) You are not required to establish an operating limit and monitor secondary voltage of the collection plates, secondary amperage of the collection plates, and effluent water flow rate at the outlet of the electrostatic precipitator if you use the continuous monitoring system specified in §§ 60.4865(b) and 60.4885(b) to demonstrate compliance with the emission limit for particulate matter, cadmium, or lead.

(4) You are not required to establish an operating limit and monitor mercury sorbent injection rate and carrier gas flow rate (or carrier gas pressure drop) if you use the continuous monitoring system specified in §§ 60.4865(b) and 60.4885(b) to demonstrate compliance with the emission limit for mercury.

(5) You are not required to establish an operating limit and monitor dioxin/furan sorbent injection rate and carrier gas flow rate (or carrier gas pressure drop) if you use the continuous monitoring system specified in §§ 60.4865(b) and 60.4885(b) to demonstrate compliance with the emission limits for dioxins/furans.

(b) For each operating parameter specified in paragraphs (c) through (k) of this section, determine the average operating parameter level during the initial or most recent performance test or performance evaluation for the applicable pollutant(s) according to the procedures specified in paragraph (b)(1), (2), or (3) of this section, as applicable.

(1) *For continuous monitoring systems that collect multiple data points each hour.* (i) Collect the incremental data for the operating parameter (*e.g.,* scrubber liquor flow rate) for each of the three performance test run periods for each applicable pollutant (e.g., sulfur dioxide and hydrogen chloride). For each applicable performance test run period, calculate the arithmetic average operating parameter level.

(ii) The highest arithmetic average operating parameter level of the applicable performance test run periods specified in paragraph (b)(1)(i) of this section represents the average operating parameter level (*e.g.,* average scrubber liquor flow rate) during the performance test(s) for the applicable pollutant(s). Use this average operating parameter level to establish the respective operating limit, as specified in paragraphs (c) through (k) of this section.

(2) *For continuous monitoring systems that collect data on an hourly basis.* (i) Collect the hourly data for the operating parameter (*e.g.,* mercury sorbent injection rate) for each of the three performance test run periods for each applicable pollutant (*e.g.,* mercury). For each applicable performance test run period, calculate the arithmetic average operating parameter level.

(ii) The highest arithmetic average operating parameter level of the applicable performance test runs specified in paragraph (b)(2)(i) of this section represents the average operating parameter level (*e.g.,* average mercury sorbent injection rate) during the performance test(s) for the applicable pollutant(s). Use this average operating parameter level to establish the respective operating limit, as specified in paragraphs (c) through (k) of this section.

(3) *For continuous monitoring systems that collect data on a daily basis.* Collect the daily data for the operating parameter (*e.g.,* sludge moisture content) for each day that a performance test is conducted for the applicable pollutant(s). The highest daily arithmetic average operating parameter level for the applicable performance tests represents the average operating parameter level (*e.g.,* average sludge moisture content) during the performance test(s) for the applicable pollutant(s). Use this average operating parameter level to establish the respective operating limit, as specified in paragraphs (c) through (k) of this section.

(c) Minimum pressure drop across each wet scrubber, calculated as 90 percent of the average pressure drop across each wet scrubber, determined according to paragraph (b)(1) of this section.

(d) Minimum scrubber liquor flow rate (measured at the inlet to the wet scrubber), calculated as 90 percent of the average liquor flow rate, determined according to paragraph (b)(1) of this section.

(e) Minimum scrubber liquor pH (measured at the inlet to the wet scrubber), calculated as 90 percent of the average liquor pH, determined according to paragraph (b)(1) of this section.

(f) Minimum combustion chamber temperature (or minimum afterburner temperature), calculated as 90 percent of the average combustion chamber temperature (or afterburner temperature), determined according to paragraph (b)(1) of this section.

(g) Minimum power input to the electrostatic precipitator collection plates, calculated as 90 percent of the average power input. Average power input must be calculated as the product of the average secondary voltage and average secondary amperage to the electrostatic precipitator, both determined according to paragraph (b)(2) of this section.

(h) Maximum effluent water flow rate at the outlet of the electrostatic precipitator, calculated as 70 percent of the average effluent water flow rate at the outlet of the electrostatic precipitator, determined according to paragraph (b)(2) of this section.

(i) For activated carbon injection:

(1) Minimum mercury sorbent injection rate, calculated as 90 percent of the average mercury sorbent injection rate, determined according to paragraph (b)(2) of this section.

(2) Minimum dioxin/furan sorbent injection rate, calculated as 90 percent of the average dioxin/furan sorbent injection rate, determined according to paragraph (b)(2) of this section.

(3) Minimum carrier gas flow rate or minimum carrier gas pressure drop, as follows:

(i) Minimum carrier gas flow rate, calculated as 90 percent of the average carrier gas flow rate, determined according to paragraph (b)(1) of this section.

(ii) Minimum carrier gas pressure drop, calculated as 90 percent of the average carrier gas flow rate, determined according to paragraph (b)(1) of this section.

(j) Maximum dry sludge feed rate, calculated as 110 percent of the average dry sludge feed rate, determined according to paragraph (b)(2) of this section.

(k) Sludge moisture content, measured on a daily basis as a percentage, must be no less than 10 percent less than and no more than 10 percent greater than the average sludge moisture content, determined according to paragraph (b)(3) of this section. For example, if your average sludge moisture content is measured as 20 percent, your sludge moisture level must be greater than or equal to 18 percent and less than or equal to 22 percent.

§ 60.4875 By what date must I conduct the initial air pollution control device inspection and make any necessary repairs?

(a) You must conduct an air pollution control device inspection according to § 60.4900(c) within 60 days of achieving the maximum feed rate at which the affected SSI unit will be operated or within 180 days of initial startup of the SSI unit, whichever comes first. For air pollution control devices installed after the SSI unit achieves the maximum feed rate at which it will be operated, you must conduct the air pollution control device inspection within 60 days after installation of the control device or within 180 days of initial startup of the SSI unit, whichever comes later.

(b) Within 10 operating days following the air pollution control device inspection under paragraph (a) of this section, all necessary repairs must be completed unless you obtain written approval from the Administrator establishing a date whereby all necessary repairs of the SSI unit must be completed.

§ 60.4880 How do I develop a site-specific monitoring plan for my continuous monitoring systems and bag leak detection system and by what date must I conduct an initial performance evaluation of my continuous monitoring systems and bag leak detection system?

You must develop and submit to the Administrator for approval a site-specific monitoring plan for each continuous monitoring system required under this subpart, according to the requirements in paragraphs (a) through (c) of this section. This requirement also applies to you if you petition the Administrator for alternative monitoring parameters under § 60.13(i) and paragraph (d) of this section. If you use a continuous automated sampling system to comply with the mercury or dioxin/furan emission limits, you must develop your monitoring plan as specified in § 60.58b(q), and you are not required to meet the requirements in paragraphs (a) and (b) of this section. You must submit your monitoring plan at least 60 days before your initial performance evaluation of your continuous monitoring system(s), as specified in paragraph (c) of this

section. You must update your monitoring plan as specified in paragraph (e) of this section.

(a) For each continuous monitoring system, your monitoring plan must address the elements and requirements specified in paragraphs (a)(1) through (8) of this section.

(1) Installation of the continuous monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device).

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer and the data collection and reduction systems.

(3) Performance evaluation procedures and acceptance criteria.

(i) For continuous emissions monitoring systems, your performance evaluation and acceptance criteria will include, but not be limited to, the following:

(A) The applicable requirements for continuous emissions monitoring systems specified in § 60.13.

(B) The applicable performance specifications (*e.g.,* relative accuracy tests) in appendix B of this part.

(C) The applicable procedures (*e.g.,* quarterly accuracy determinations and daily calibration drift tests) in appendix F of this part.

(ii) For continuous opacity monitoring systems, your performance evaluation and acceptance criteria will include, but not be limited to, the following:

(A) The applicable requirements for continuous emissions monitoring systems specified in § 60.13.

(B) Performance Specification 1 in appendix B of this part.

(iii) For continuous parameter monitoring systems, your performance evaluation and acceptance criteria must include, but not be limited to, the associated performance specifications and quality assurance procedures.

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of § 60.11(d).

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 60.13.

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 60.7(b), (c), (c)(1), (c)(4), (d), (e), (f), and (g).

(7) Provisions for periods when the continuous monitoring system is out of control, as follows:

(i) A continuous emissions monitoring system is out of control if the conditions in any one of paragraphs (a)(7)(i)(A), (a)(7)(i)(B), or (a)(7)(i)(C) of this section are met.

(A) The zero (low-level), mid-level (if applicable), or high-level calibration drift exceeds two times the applicable calibration drift specification in the applicable performance specification or in the relevant standard.

(B) The continuous emissions monitoring system fails a performance test audit (*e.g.,* cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit.

(C) The continuous opacity monitoring system calibration drift exceeds two times the limit in the applicable performance specification in the relevant standard.

(ii) When the continuous emissions monitoring system is out of control as specified in paragraph (a)(7)(i) of this section, you must take the necessary corrective action and must repeat all necessary tests that indicate that the system is out of control. You must take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour you conduct a performance check (*e.g.,* calibration drift) that indicates an exceedance of the performance requirements established under this part. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits.

(8) Schedule for conducting initial and periodic performance evaluations of your continuous monitoring systems in accordance with your site-specific monitoring plan.

(b) If a bag leak detection system is used, your monitoring plan must include a description of the following items:

(1) Installation of the bag leak detection system.

(2) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established.

(3) Operation of the bag leak detection system, including quality assurance procedures.

(4) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list.

(5) How the bag leak detection system output will be recorded and stored.

(c) You must conduct an initial performance evaluation of each continuous monitoring system and bag leak detection system, as applicable, in accordance with your monitoring plan, and within 60 days of installation of the continuous monitoring system and bag leak detection system, as applicable.

(d) You may submit an application to the Administrator for approval of alternate monitoring requirements to demonstrate compliance with the standards of this subpart, subject to the provisions of paragraphs (d)(1) through (d)(6) of this section.

(1) The Administrator will not approve averaging periods other than those specified in this section, unless you document, using data or information, that the longer averaging period will ensure that emissions do not exceed levels achieved during the performance test over any increment of time equivalent to the time required to conduct three runs of the performance test.

(2) If the application to use an alternate monitoring requirement is approved, you must continue to use the original monitoring requirement until approval is received to use another monitoring requirement.

(3) You must submit the application for approval of alternate monitoring requirements no later than the notification of performance test. The application must contain the information specified in paragraphs (d)(3)(i) through (d)(3)(iii) of this section:

(i) Data or information justifying the request, such as the technical or economic infeasibility, or the impracticality of using the required approach.

(ii) A description of the proposed alternative monitoring requirement, including the operating parameter to be monitored, the monitoring approach and technique, the averaging period for the limit, and how the limit is to be calculated.

(iii) Data or information documenting that the alternative monitoring requirement would provide equivalent or better assurance of compliance with the relevant emission standard.

(4) The Administrator will notify you of the approval or denial of the application within 90 calendar days after receipt of the original request, or within 60 calendar days of the receipt of any supplementary information, whichever is later. The Administrator will not approve an alternate monitoring application unless it would provide equivalent or better assurance of compliance with the relevant emission standard. Before disapproving any alternate monitoring application, the Administrator will provide the following:

(i) Notice of the information and findings upon which the intended disapproval is based.

(ii) Notice of opportunity for you to present additional supporting information before final action is taken on the application. This notice will specify how much additional time is allowed for you to provide additional supporting information.

(5) You are responsible for submitting any supporting information in a timely manner to enable the Administrator to consider the application prior to the performance test. Neither submittal of an application, nor the Administrator's failure to approve or disapprove the application relieves you of the responsibility to comply with any provision of this subpart.

(6) The Administrator may decide at any time, on a case-by-case basis that additional or alternative operating limits, or alternative approaches to establishing operating limits, are necessary to demonstrate compliance with the emission standards of this subpart.

(e) You must update your monitoring plan if there are any changes in your monitoring procedures or if there is a process change, as defined in § 60.4930.

Continuous Compliance Requirements

§ 60.4885 How and when do I demonstrate continuous compliance with the emission limits and standards?

To demonstrate continuous compliance with the emission limits and standards specified in Table 1 to this subpart, use the procedures specified in paragraph (a) of this section for particulate matter, hydrogen chloride, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, opacity, and fugitive emissions from ash handling, and follow the procedures specified in paragraph (b) of this section for carbon monoxide. In lieu of using the procedures specified in paragraph (a) of this section, you also have the option to demonstrate continuous compliance using the procedures specified in paragraph (b) of this section for particulate matter, hydrogen chloride, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and opacity. You must meet the requirements of paragraphs (a) and (b) of this section, as applicable, and paragraphs (c) through (e) of this section, according to the performance testing, monitoring, and calibration requirements in § 60.4900(a) and (b).

(a) Demonstrate continuous compliance using a performance test. Within 10 to 12 months following the initial performance test (except as provided in paragraph (e) of this section), demonstrate continuous compliance with the emission limits and standards in Table 1 to this subpart for particulate matter, hydrogen chloride, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, opacity, and fugitive emissions from ash handling using a performance test. The performance test must be conducted using the test methods, averaging methods, and minimum sampling volumes or durations specified in Table 1 to this subpart and according to the testing, monitoring, and calibration requirements specified in § 60.4900(a). Conduct subsequent annual performance tests within 10 to 12 months following the previous one.

(1) You may conduct a repeat performance test at any time to establish new values for the operating limits to apply from that point forward. The Administrator may request a repeat performance test at any time.

(2) You must repeat the performance test within 60 days of a process change, as defined in § 60.4930.

(3) You have the option to perform less frequent testing to demonstrate compliance with the particulate matter, hydrogen chloride, mercury, nitrogen oxides, sulfur dioxide, cadmium, and lead emission limits.

(i) To perform less frequent testing, you must meet the following requirements:

(A) You have test data for at least 3 consecutive years.

(B) The test data results for particulate matter, hydrogen chloride, carbon monoxide, mercury, nitrogen oxides, sulfur dioxide, cadmium, or lead are less than 75 percent of the applicable emission limits.

(C) There are no changes in the operation of the SSI unit or air pollution control equipment that could increase emissions. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no more than 36 months following the previous performance test.

(ii) If your SSI unit continues to emit less than 75 percent of the emission limit for particulate matter, hydrogen chloride, mercury, nitrogen oxides, sulfur dioxide, cadmium, carbon monoxide, or lead and there are no changes in the operation of the SSI unit or air pollution control equipment that could increase emissions, you may choose to conduct performance tests for these pollutants every third year, but each test must be within 36 months of the previous performance test.

(iii) If a performance test shows emissions exceeded 75 percent or greater of the emission limit for particulate matter, hydrogen chloride, mercury, nitrogen oxides, sulfur dioxide, cadmium, carbon monoxide, or lead, you must conduct annual performance tests for that pollutant until all performance tests over the next 3-year period are within 75 percent of the applicable emission limit.

(b) Demonstrate continuous compliance using a continuous emissions monitoring system, continuous opacity monitoring system, or continuous automated sampling system. Collect data as specified in § 60.4900(b)(6) and use the following procedures:

(1) To demonstrate continuous compliance with the carbon monoxide emission limit, you must use the carbon monoxide continuous emissions monitoring system specified in § 60.4900(b).

(2) To demonstrate continuous compliance with the emission limits for particulate matter, hydrogen chloride, dioxins/furans total mass, dioxins/furans toxic equivalency, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and opacity, you may substitute the use of a continuous monitoring system in lieu of conducting the annual performance test required in paragraph (a) of this section, as follows:

(i) You may substitute the use of a continuous emissions monitoring system for any pollutant (except opacity) specified in paragraph (b)(2) of this section in lieu of conducting the annual performance test for that pollutant in paragraph (a) of this section.

(ii) If your SSI unit is not equipped with a wet scrubber, you may substitute the use of a continuous opacity monitoring system in lieu of conducting the annual opacity and particulate matter performance tests in paragraph (a) of this section.

(iii) You may substitute the use of a particulate matter continuous emissions monitoring system in lieu of conducting the annual opacity performance test in paragraph (a) of this section.

(iv) You may substitute the use of a continuous automated sampling system for mercury or dioxins/furans in lieu of conducting the annual mercury or dioxin/furan performance test in paragraph (a) of this section.

(3) If you use a continuous emissions monitoring system to demonstrate compliance with an applicable emission limit in either paragraph (b)(1) or (2) of this section, you must use the continuous emissions monitoring system and follow the requirements

specified in § 60.4900(b). You must measure emissions according to § 60.13 to calculate 1-hour arithmetic averages, corrected to 7 percent oxygen (or carbon dioxide). You must demonstrate initial compliance using a 24-hour block average of these 1-hour arithmetic average emission concentrations, calculated using Equation 19–19 in section 12.4.1 of Method 19 of 40 CFR part 60, appendix A–7.

(4) If you use a continuous automated sampling system to demonstrate compliance with an applicable emission limit in paragraph (b)(2) of this section, you must:

(i) Use the continuous automated sampling system specified in § 60.58b(p) and (q), and measure and calculate average emissions corrected to 7 percent oxygen (or carbon dioxide) according to § 60.58b(p) and your monitoring plan.

(A) Use the procedures specified in § 60.58b(p) to calculate 24-hour averages to determine compliance with the mercury emission limit in Table 1 to this subpart.

(B) Use the procedures specified in § 60.58b(p) to calculate 2-week averages to determine compliance with the dioxin/furan emission limits in Table 1 to this subpart.

(ii) Update your monitoring plan as specified in § 60.4880(e). For mercury continuous automated sampling systems, you must use Performance Specification 12B of appendix B of part 75 and Procedure 1 of appendix F of this part.

(5) If you use a continuous opacity monitoring system to demonstrate compliance with an applicable emission or opacity limit in paragraph (b)(2) of this section, you must use the continuous opacity monitoring system and follow the requirements specified in § 60.4900(b). You must measure emissions and calculate 6-minute averages as specified in § 60.13(h)(1). Using these 6-minute averages, you must calculate 1-hour block average opacity values. You must demonstrate initial compliance using the arithmetic average of three 1-hour block averages.

(6) Except as provided in paragraph (e) of this section, you must complete your periodic performance evaluations required under your monitoring plan for any continuous emissions monitoring system, continuous opacity monitoring systems, and continuous automated sampling systems, according to the schedule specified in your monitoring plan. If you were previously determining compliance by conducting an annual performance test, you must complete the initial performance evaluation required in your monitoring plan in § 60.4880 for the continuous monitoring system within 60 days of notification to the Administrator of use of the continuous emissions monitoring system, continuous opacity monitoring, or continuous automated sampling system. Your performance evaluation must be conducted using the procedures and acceptance criteria specified in § 60.4880(a)(3).

(c) To demonstrate compliance with the dioxins/furans toxic equivalency emission limit in paragraph (a) or (b) of this section, you must determine dioxins/furans toxic equivalency as follows:

(1) Measure the concentration of each dioxin/furan tetra-through octachlorinated-congener emitted using EPA Method 23.

(2) For each dioxin/furan (tetra-through octachlorinated) congener measured in accordance with paragraph (c)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 to this subpart.

(3) Sum the products calculated in accordance with paragraph (c)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

(d) You must submit the annual compliance report specified in § 60.4915(d). You must submit the deviation report specified in § 60.4915(e) for each instance that you did not meet each emission limit in Table 1 to this subpart.

(e) If you demonstrate continuous compliance using a performance test, as specified in paragraph (a) of this section, then the provisions of this paragraph (e) apply. If a force majeure is about to occur, occurs, or has occurred for which you intend to assert a claim of force majeure, you must notify the Administrator in writing as specified in § 60.4915(g). You must conduct the performance test as soon as practicable after the force majeure occurs. The Administrator will determine whether or not to grant the extension to the performance test deadline, and will notify you in writing of approval or disapproval of the request for an extension as soon as practicable. Until an extension of the performance test deadline has been approved by the Administrator, you remain strictly subject to the requirements of this subpart.

§ 60.4890 How do I demonstrate continuous compliance with my operating limits?

You must meet the requirements of paragraphs (a) through (c) of this section, according to the monitoring and calibration requirements in § 60.4905.

(a) You must continuously monitor the operating parameters specified in paragraphs (a)(1) and (2) of this section using the continuous monitoring equipment and according to the procedures specified in § 60.4905, except as provided in § 60.4855. Four-hour rolling average values are used to determine compliance (except for sludge moisture content and alarm time of the baghouse leak detection system) unless a different averaging period is established under § 60.4855 for an air pollution control device other than a wet scrubber, fabric filter, electrostatic precipitator, or activated carbon injection. A daily average must be used to determine compliance for sludge moisture content.

(1) You must demonstrate that the SSI unit meets the operating limits established according to §§ 60.4855 and 60.4870 for each applicable operating parameter.

(2) You must demonstrate that the SSI unit meets the operating limit for bag leak detection systems as follows:

(i) For a bag leak detection system, you must calculate the alarm time as follows:

(A) If inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted.

(B) If corrective action is required, each alarm time shall be counted as a minimum of 1 hour.

(C) If you take longer than 1 hour to initiate corrective action, each alarm time (*i.e.,* time that the alarm sounds) is counted as the actual amount of time taken by you to initiate corrective action.

(ii) Your maximum alarm time is equal to 5 percent of the operating time during a 6-month period, as specified in § 60.4850(c).

(b) Operation above the established maximum, below the established minimum, or outside the allowable range of the operating limits specified in paragraph (a) of this section constitutes a deviation from your operating limits established under this subpart, except during performance tests conducted to determine compliance with the emission and operating limits or to establish new operating limits. You must submit the deviation report specified in § 60.4915(e) for each instance that you did not meet one of your operating limits established under this subpart.

(c) You must submit the annual compliance report specified in § 60.4915(d) to demonstrate continuous compliance.

§ 60.4895 By what date must I conduct annual air pollution control device inspections and make any necessary repairs?

(a) You must conduct an annual inspection of each air pollution control device used to comply with the emission limits, according to § 60.4900(c), within 10 to 12 months following the previous annual air pollution control device inspection.

(b) Within 10 operating days following an air pollution control device inspection, all necessary repairs must be completed unless you obtain written approval from the Administrator establishing a date whereby all necessary repairs of the affected SSI unit must be completed.

Performance Testing, Monitoring, and Calibration Requirements

§ 60.4900 What are the performance testing, monitoring, and calibration requirements for compliance with the emission limits and standards?

You must meet, as applicable, the performance testing requirements specified in paragraph (a) of this section, the monitoring requirements specified in paragraph (b) of this section, the air pollution control device inspections requirements specified in paragraph (c) of this section, and the bypass stack provisions specified in paragraph (d) of this section.

(a) *Performance testing requirements.* (1) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations, as specified in § 60.8(c). Emissions in excess of the emission limits or standards during periods of startup, shutdown, and malfunction are considered deviations from the applicable emission limits or standards.

(2) You must document that the dry sludge burned during the performance test is representative of the sludge burned under normal operating conditions by:

(i) Maintaining a log of the quantity of sewage sludge burned during the performance test.

(ii) Maintaining a log of the moisture content of the sewage sludge burned during the performance test.

(3) All performance tests must be conducted using the test methods, minimum sampling volume, observation period, and averaging methods specified in Table 1 to this subpart.

(4) Method 1 at 40 CFR part 60, appendix A–1 must be used to select the sampling location and number of traverse points.

(5) Method 3A or 3B at 40 CFR part 60, appendix A–2 must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B at 40 CFR part 60, appendix A–2 must be used simultaneously with each method.

(6) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 of this section:

$$C_{adj} = C_{meas}(20.9 - 7)/(20.9 - \%O_2) \qquad \text{(Eq. 1)}$$

Where:

C_{adj} = Pollutant concentration adjusted to 7 percent oxygen.

C_{meas} = Pollutant concentration measured on a dry basis.

(20.9 − 7) = 20.9 percent oxygen − 7 percent oxygen (defined oxygen correction basis).

20.9 = Oxygen concentration in air, percent.

$\%O_2$ = Oxygen concentration measured on a dry basis, percent.

(7) Performance tests must be conducted and data reduced in accordance with the test methods and procedures contained in this subpart unless the Administrator does one of the following.

(i) Specifies or approves, in specific cases, the use of a method with minor changes in methodology.

(ii) Approves the use of an equivalent method.

(iii) Approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance.

(iv) Waives the requirement for performance tests because you have demonstrated by other means to the Administrator's satisfaction that the affected SSI unit is in compliance with the standard.

(v) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this paragraph is construed to abrogate the Administrator's authority to require testing under section 114 of the Clean Air Act.

(8) You must provide the Administrator at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, you must notify the Administrator as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test, or by arranging a rescheduled date with the Administrator by mutual agreement.

(9) You must provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods applicable to the SSI unit, as follows:

(A) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures.

(B) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures.

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(10) Unless otherwise specified in this subpart, each performance test must consist of three separate runs using the applicable test method. Each run must be conducted for the time and under the conditions specified in the applicable standard. Compliance with each emission limit must be determined by calculating the arithmetic mean of the three runs. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond your control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(b) *Continuous monitor requirements.* You must meet the following requirements, as applicable, when using a continuous monitoring system to demonstrate compliance with the emission limits in Table 1 to this subpart. The option to use a continuous emissions monitoring system for

hydrogen chloride, dioxins/furans, cadmium, or lead takes effect on the date a final performance specification applicable to hydrogen chloride, dioxins/furans, cadmium, or lead is published in the **Federal Register**. If you elect to use a continuous emissions monitoring system or continuous opacity monitoring system instead of conducting annual performance testing, you must meet the requirements of paragraphs (b)(1) through (6) of this section. If you elect to use a continuous automated sampling system instead of conducting annual performance testing, you must meet the requirements of paragraph (b)(7) of this section. The option to use a continuous automated sampling system for mercury or dioxins/furans takes effect on the date a final performance specification for such a continuous automated sampling system is published in the **Federal Register**.

(1) You must notify the Administrator 1 month before starting use of the continuous emissions monitoring system or continuous opacity monitoring system.

(2) You must notify the Administrator 1 month before stopping use of the continuous emissions monitoring system or continuous opacity monitoring system, in which case you must also conduct a performance test within 60 days of ceasing operation of the system.

(3) You must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the emissions to the atmosphere or opacity in accordance with the following:

(i) Section 60.13 of subpart A of this part.

(ii) The following performance specifications of appendix B of this part, as applicable:

(A) For particulate matter, Performance Specification 11 of appendix B of this part.

(B) For hydrogen chloride, Performance Specification 15 of appendix B of this part.

(C) For carbon monoxide, Performance Specification 4B of appendix B of this part.

(D) [Reserved]

(E) For mercury, Performance Specification 12A of appendix B of this part.

(F) For nitrogen oxides, Performance Specification 2 of appendix B of this part.

(G) For sulfur dioxide, Performance Specification 2 of appendix B of this part.

(H) [Reserved]

(I) [Reserved]

(J) For opacity, Performance Specification 1 of appendix B of this part.

(iii) For continuous emissions monitoring systems, the quality assurance procedures (e.g., quarterly accuracy determinations and daily calibration drift tests) of appendix F of this part specified in paragraphs (b)(3)(iii)(A) through (I) of this section. For each pollutant, the span value of the continuous emissions monitoring system is two times the applicable emission limit, expressed as a concentration.

(A) For particulate matter, Procedure 2 in appendix F of this part.

(B) For hydrogen chloride, Procedure 1 in appendix F of this part except that the Relative Accuracy Test Audit requirements of Procedure 1 shall be replaced with the validation requirements and criteria of sections 11.1.1 and 12.0 of Performance Specification 15 of appendix B of this part.

(C) For carbon monoxide, Procedure 1 in appendix F of this part.

(D) [Reserved]

(E) For mercury, Procedures 1 and 5 in appendix F of this part.

(F) For nitrogen oxides, Procedure 1 in appendix F of this part.

(G) For sulfur dioxide, Procedure 1 in appendix F of this part.

(H) [Reserved]

(I) [Reserved]

(4) During each relative accuracy test run of the continuous emissions monitoring system using the performance specifications in paragraph (b)(3)(ii) of this section, emission data for each regulated pollutant and oxygen (or carbon dioxide as established in paragraph (b)(5) of this section) must be collected concurrently (or within a 30- to 60-minute period) by both the continuous emissions monitors and the test methods specified in paragraphs (b)(4)(i) through (viii) of this section. Relative accuracy testing must be at normal operating conditions while the SSI unit is charging sewage sludge.

(i) For particulate matter, Method 5 at 40 CFR part 60, appendix A–3 or Method 26A or 29 at 40 CFR part 60, appendix A–8 shall be used.

(ii) For hydrogen chloride, Method 26 or 26A at 40 CFR part 60, appendix A–8, shall be used.

(iii) For carbon monoxide, Method 10, 10A, or 10B at 40 CFR part 60, appendix A–4, shall be used.

(iv) For dioxins/furans, Method 23 at 40 CFR part 60, appendix A–7, shall be used.

(v) For mercury, cadmium, and lead, Method 29 at 40 CFR part 60, appendix A–8, or as an alternative ASTM D6784–02, shall be used.

(vi) For nitrogen oxides, Method 7 or 7E at 40 CFR part 60, appendix A–4, shall be used.

(vii) For sulfur dioxide, Method 6 or 6C at 40 CFR part 60, appendix A–4, or as an alternative American National Standards Institute/American Society of Mechanical Engineers PTC–19.10–1981 Flue and Exhaust Gas Analysis [Part 10, Instruments and Apparatus] must be used. For sources that have actual inlet emissions less than 100 parts per million dry volume, the relative accuracy criterion for inlet sulfur dioxide continuous emissions monitoring system should be no greater than 20 percent of the mean value of the method test data in terms of the units of the emission standard, or 5 parts per million dry volume absolute value of the mean difference between the method and the continuous emissions monitoring system, whichever is greater.

(viii) For oxygen (or carbon dioxide as established in paragraph (a)(2)(v) of this section), Method 3A or 3B at 40 CFR part 60, appendix A–2, or as an alternative American National Standards Institute/American Society of Mechanical Engineers PTC–19.10–1981—Flue and Exhaust Gas Analysis [Part 10, Instruments and Apparatus], as applicable, must be used.

(5) You may request that compliance with the emission limits (except opacity) be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels must be established during the initial performance test according to the procedures and methods specified in paragraphs (b)(5)(i) through (iv) of this section. This relationship may be re-established during subsequent performance compliance tests.

(i) The fuel factor equation in Method 3B at 40 CFR part 60, appendix A–2 must be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Method 3A or 3B at 50 CFR part 60, appendix A–2, or as an alternative American National Standards Institute/American Society of Mechanical Engineers PTC–19.–10–1981—Flue and Exhaust Gas Analysis [Part 10, Instruments and Apparatus], as applicable, must be used to determine the oxygen concentration at the same location as the carbon dioxide monitor.

(ii) Samples must be taken for at least 30 minutes in each hour.

(iii) Each sample must represent a 1-hour average.

(iv) A minimum of three runs must be performed.

(6) You must collect data with the continuous monitoring system as follows:

(i) You must collect data using the continuous monitoring system at all times the affected SSI unit is operating and at the intervals specified in paragraph (b)(6)(ii) of this section, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(ii) You must collect continuous opacity monitoring system data in accordance with § 60.13(e)(1), and you must collect continuous emissions monitoring system data in accordance with § 60.13(e)(2).

(iii) Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities must not be included in calculations used to report emissions or operating levels. Any such periods must be reported in a deviation report.

(iv) Any data collected during periods when the monitoring system is out of control as specified in § 60.4880(a)(7)(i) must not be included in calculations used to report emissions or operating levels. Any such periods that do not coincide with a monitoring system malfunction, as defined in § 60.4930, constitute a deviation from the monitoring requirements and must be reported in a deviation report.

(v) You must use all the data collected during all periods except those periods specified in paragraphs (b)(6)(iii) and (iv) of this section in assessing the operation of the control device and associated control system.

(7) If you elect to use a continuous automated sampling system instead of conducting annual performance testing, you must:

(i) Install, calibrate, maintain, and operate a continuous automated sampling system according to the site-specific monitoring plan developed in § 60.58b(p)(1) through (p)(6), (p)(9), (p)(10), and (q).

(ii) Collect data according to § 60.58b(p)(5) and paragraph (b)(6) of this section.

(c) *Air pollution control device inspections.* You must conduct air pollution control device inspections that include, at a minimum, the following:

(1) Inspect air pollution control device(s) for proper operation, if applicable.

(2) Ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment.

(3) Generally observe that the equipment is maintained in good operating condition.

(4) Ensure that the air pollution control device meets manufacturer recommendations.

(d) *Bypass stack.* Use of the bypass stack at any time that sewage sludge is being charged to the SSI unit is an emissions standards deviation for all pollutants listed in Table 1 to this subpart. The use of the bypass stack during a performance test invalidates the performance test.

§ 60.4905 What are the monitoring and calibration requirements for compliance with my operating limits?

(a) You must install, operate, calibrate, and maintain the continuous parameter monitoring systems for measuring flow, pressure, pH, and temperature according to the requirements in paragraphs (a)(1) and (2) of this section:

(1) Meet the following general requirements for flow, pressure, pH, and temperature measurement devices:

(i) You must collect data using the continuous monitoring system at all times the affected SSI unit is operating and at the intervals specified in paragraph (a)(1)(ii) of this section, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(ii) You must collect continuous parameter monitoring system data in accordance with § 60.13(e)(2).

(iii) Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities must not be included in calculations used to report emissions or operating levels. Any such periods must be reported in your annual deviation report.

(iv) Any data collected during periods when the monitoring system is out of control as specified in § 60.4880(a)(7)(i) must not be included in calculations used to report emissions or operating levels. Any such periods that do not coincide with a monitoring system malfunction, as defined in § 60.4930, constitute a deviation from the monitoring requirements and must be reported in a deviation report.

(v) You must use all the data collected during all periods except those periods specified in paragraphs (a)(1)(iii) and (iv) of this section in assessing the operation of the control device and associated control system.

(vi) Determine the 4-hour rolling average of all recorded readings, except as provided in paragraph (a)(1)(iii) of this section.

(vii) Record the results of each inspection, calibration, and validation check.

(2) Meet the following requirements for each type of measurement device:

(i) If you have an operating limit that requires the use of a flow measurement device, you must meet the following requirements:

(A) Locate the flow sensor and other necessary equipment in a position that provides a representative flow.

(B) Use a flow sensor with a measurement sensitivity of 2 percent of the flow rate.

(C) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(D) Conduct a flow sensor calibration check at least semi-annually.

(E) For carrier gas flow rate monitors (for activated carbon injection), during the performance test conducted pursuant to § 60.4885, you must demonstrate that the system is maintained within +/-5 percent accuracy, according to the procedures in appendix A to part 75 of this chapter.

(ii) If you have an operating limit that requires the use of a pressure measurement device, you must meet the following requirements:

(A) Locate the pressure sensor(s) in a position that provides a representative measurement of the pressure.

(B) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(C) Use a gauge with a minimum tolerance of 1.27 centimeters of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(D) Check pressure tap pluggage daily.

(E) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(F) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(G) For carrier gas pressure drop monitors (for activated carbon injection), during the performance test conducted pursuant to § 60.4885, you must demonstrate that the system is maintained within +/-5 percent accuracy.

(iii) If you have an operating limit that requires the use of a pH measurement

device, you must meet the following requirements:

(A) Locate the pH sensor in a position that provides a representative measurement of scrubber effluent pH.

(B) Ensure the sample is properly mixed and representative of the fluid to be measured.

(C) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(iv) If you have an operating limit that requires the use of a temperature measurement device, you must meet the following requirements:

(A) Locate the temperature sensor and other necessary equipment in a position that provides a representative temperature.

(B) Use a temperature sensor with a minimum tolerance of 2.3 degrees Celsius (5 degrees Fahrenheit), or 1.0 percent of the temperature value, whichever is larger, for a noncryogenic temperature range.

(C) Use a temperature sensor with a minimum tolerance of 2.3 degrees Celsius (5 degrees Fahrenheit), or 2.5 percent of the temperature value, whichever is larger, for a cryogenic temperature range.

(D) Conduct a temperature measurement device calibration check at least every 3 months.

(b) You must install, operate, calibrate, and maintain the continuous parameter monitoring systems for voltage, amperage, mass flow rate, and bag leak detection system as specified in paragraphs (b)(1) through (3) of this section.

(1) If you have an operating limit that requires the use of equipment to monitor secondary voltage and secondary amperage (or power input) of an electrostatic precipitator, you must use secondary voltage and secondary amperage monitoring equipment to measure secondary voltage and secondary amperage to the electrostatic precipitator.

(2) If you have an operating limit that requires the use of equipment to monitor mass flow rate for sorbent injection (*e.g.,* weigh belt, weigh hopper, or hopper flow measurement device), you must meet the following requirements:

(i) Locate the device in a position(s) that provides a representative measurement of the total sorbent injection rate.

(ii) Install and calibrate the device in accordance with manufacturer's procedures and specifications.

(iii) At least annually, calibrate the device in accordance with the manufacturer's procedures and specifications.

(3) If you use a fabric filter to comply with the requirements of this subpart, you must:

(i) Install, operate, calibrate, and maintain your bag leak detection system as follows:

(A) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(B) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations and in accordance with the guidance provided in EPA–454/R–98–015, September 1997.

(C) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of 10 milligrams per actual cubic meter or less.

(D) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(E) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(F) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(G) For positive pressure fabric filter systems that do not duct all compartments of cells to a common stack, a bag leak detection system must be installed in each baghouse compartment or cell.

(H) Where multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors.

(I) You must operate and maintain your bag leak detection system in continuous operation according to your monitoring plan required under § 60.4880.

(ii) You must initiate procedures to determine the cause of every alarm within 8 hours of the alarm, and you must alleviate the cause of the alarm within 24 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(A) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate matter emissions.

(B) Sealing off defective bags or filter media.

(C) Replacing defective bags or filter media or otherwise repairing the control device.

(D) Sealing off a defective fabric filter compartment.

(E) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system.

(F) Shutting down the process producing the PM emissions.

(c) You must operate and maintain the continuous parameter monitoring systems specified in paragraphs (a) and (b) of this section in continuous operation according to your monitoring plan required under § 60.4880.

(d) If your SSI unit has a bypass stack, you must install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack including date, time, and duration.

Recordkeeping and Reporting

§ 60.4910 What records must I keep?

You must maintain the items (as applicable) specified in paragraphs (a) through (m) of this section for a period of at least 5 years. All records must be available on site in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

(a) *Date.* Calendar date of each record.

(b) *Siting.* All documentation produced as a result of the siting requirements of §§ 60.4800 and 60.4805.

(c) *Operator Training.* Documentation of the operator training procedures and records specified in paragraphs (c)(1) through (4) of this section. You must make available and readily accessible at the facility at all times for all SSI unit operators the documentation specified in paragraph (c)(1) of this section.

(1) Documentation of the following operator training procedures and information:

(i) Summary of the applicable standards under this subpart.

(ii) Procedures for receiving, handling, and feeding sewage sludge.

(iii) Incinerator startup, shutdown, and malfunction procedures.

(iv) Procedures for maintaining proper combustion air supply levels.

(v) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(vi) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(vii) Reporting and recordkeeping procedures.

(viii) Procedures for handling ash.

(ix) A list of the materials burned during the performance test, if in addition to sewage sludge.

(x) For each qualified operator and other plant personnel who may operate the unit according to the provisions of § 60.4835(a), the phone and/or pager number at which they can be reached during operating hours.

(2) Records showing the names of SSI unit operators and other plant personnel who may operate the unit according to the provisions of § 60.4835(a), as follows:

(i) Records showing the names of SSI unit operators and other plant personnel who have completed review of the information in paragraph (c)(1) of this section as required by § 60.4840(b), including the date of the initial review and all subsequent annual reviews.

(ii) Records showing the names of the SSI operators who have completed the operator training requirements under § 60.4810, met the criteria for qualification under § 60.4820, and maintained or renewed their qualification under § 60.4825 or § 60.4830. Records must include documentation of training, including the dates of their initial qualification and all subsequent renewals of such qualifications.

(3) Records showing the periods when no qualified operators were accessible for more than 8 hours, but less than 2 weeks, as required in § 60.4835(a).

(4) Records showing the periods when no qualified operators were accessible for 2 weeks or more along with copies of reports submitted as required in § 60.4835(b).

(d) *Air pollution control device inspections.* Records of the results of initial and annual air pollution control device inspections conducted as specified in §§ 60.4875 and 60.4900(c), including any required maintenance and any repairs not completed within 10 days of an inspection or the timeframe established by the Administrator.

(e) *Performance test reports.* (1) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and standards and/or to establish operating limits, as applicable.

(2) Retain a copy of the complete performance test report, including calculations.

(3) Keep a record of the log of the quantity of sewage sludge burned during the performance tests, as required in § 60.4900(a)(2).

(4) Keep any necessary records to demonstrate that the performance test was conducted under conditions representative of normal operations.

(f) *Continuous monitoring data.* Records of the following data, as applicable:

(1) For continuous opacity monitoring systems, all 6-minute average and 1-hour block average levels of opacity.

(2) For continuous emissions monitoring systems, all 1-hour average concentrations of particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, and lead emissions.

(3) For continuous automated sampling systems, all average concentrations measured for mercury and dioxins/furans at the frequencies specified in your monitoring plan.

(4) For continuous parameter monitoring systems:

(i) All 1-hour average values recorded for the following operating parameters, as applicable:

(A) Dry sludge feed rate and combustion chamber temperature (or afterburner temperature).

(B) If a wet scrubber is used to comply with the rule, pressure drop across the wet scrubber system, liquor flow rate to the wet scrubber, and liquor pH as introduced to the wet scrubber.

(C) If an electrostatic precipitator is used to comply with the rule, voltage of the electrostatic precipitator collection plates or amperage of the electrostatic precipitator collection plates, and effluent water flow rate at the outlet of the wet electrostatic precipitator.

(D) If activated carbon injection is used to comply with the rule, mercury sorbent flow rate and carrier gas flow rate or pressure drop, as applicable.

(ii) Daily average values and composite sample values for sludge moisture content.

(iii) If a fabric filter is used to comply with the rule, the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in § 60.4850(b).

(iv) For other control devices for which you must establish operating limits under § 60.4855, you must maintain data collected for all operating parameters used to determine compliance with the operating limits, at the frequencies specified in your monitoring plan.

(g) *Other records for continuous monitoring systems.* You must keep the following records, as applicable:

(1) Keep records of any notifications to the Administrator in § 60.4915(h)(1) of starting or stopping use of a continuous monitoring system for determining compliance with any emissions limit.

(2) Keep records of any requests under § 60.4900(b)(5) that compliance with the emission limits (except opacity) be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen.

(3) If activated carbon injection is used to comply with the rule, the type of sorbent used and any changes in the type of sorbent used.

(h) *Deviation Reports.* Records of any deviation reports submitted under § 60.4915(e) and (f).

(i) *Equipment specifications and operation and maintenance requirements.* Equipment specifications and related operation and maintenance requirements received from vendors for the incinerator, emission controls, and monitoring equipment.

(j) *Calibration of monitoring devices.* Records of calibration of any monitoring devices as required under §§ 60.4900 and 60.4905.

(k) *Monitoring plan and performance evaluations for continuous monitoring systems.* Records of the monitoring plan required under § 60.4880, and records of performance evaluations required under § 60.4885(b)(6).

(l) *Less frequent testing.* Any records required to document that your SSI unit qualifies for less frequent testing under § 60.4885(a)(3).

(m) *Use of bypass stack.* Records indicating use of the bypass stack, including dates, times, and durations as required under § 60.4905(c).

§ 60.4915 What reports must I submit?

You must submit the reports specified in paragraphs (a) through (j) of this section. See Table 4 to this subpart for a summary of these reports.

(a) *Notification of construction.* You must submit a notification prior to commencing construction that includes the four items listed in paragraphs (a)(1) through (4) of this section:

(1) A statement of intent to construct.

(2) The anticipated date of commencement of construction.

(3) All documentation produced as a result of the siting requirements of § 60.4805.

(4) Anticipated date of initial startup.

(b) *Notification of initial startup.* You must submit the information specified in paragraphs (b)(1) through (b)(5) of this section prior to initial startup:

(1) The maximum design dry sludge burning capacity.

(2) The anticipated maximum dry sludge feed rate.

(3) If applicable, the petition for site-specific operating limits specified in § 60.4855.

(4) The anticipated date of initial startup.

(5) The site-specific monitoring plan required under § 60.4880, at least 60 days before your initial performance evaluation of your continuous monitoring system.

(c) *Initial compliance report.* You must submit the following information no later than 60 days following the initial performance test.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report.

(4) The complete test report for the initial performance test results obtained by using the test methods specified in Table 1 to this subpart.

(5) If an initial performance evaluation of a continuous monitoring system was conducted, the results of that initial performance evaluation.

(6) The values for the site-specific operating limits established pursuant to §§ 60.4850 and 60.4855 and the calculations and methods used to establish each operating limit.

(7) If you are using a fabric filter to comply with the emission limits, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 60.4850(b).

(8) The results of the initial air pollution control device inspection required in § 60.4875, including a description of repairs.

(d) *Annual compliance report.* You must submit an annual compliance report that includes the items listed in paragraphs (d)(1) through (15) of this section for the reporting period specified in paragraph (d)(3) of this section. You must submit your first annual compliance report no later than 12 months following the submission of the initial compliance report in paragraph (c) of this section. You must submit subsequent annual compliance reports no more than 12 months following the previous annual compliance report. (If the unit is subject to permitting requirements under title V of the Clean Air Act, you may be required by the permit to submit these reports more frequently.)

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If a performance test was conducted during the reporting period, the results of that performance test.

(i) If operating limits were established during the performance test, include the value for each operating limit and the method used to establish each operating limit, including calculations.

(ii) If activated carbon is used during the performance test, include the type of activated carbon used.

(5) For each pollutant and operating parameter recorded using a continuous monitoring system, the highest recorded 3-hour average and the lowest recorded 3-hour average during the reporting period, as applicable.

(6) If there are no deviations during the reporting period from any emission limit, emission standard, or operating limit that applies to you, a statement that there were no deviations from the emission limits, emission standard, or operating limits.

(7) Information for bag leak detection systems recorded under § 60.4910(f)(4)(iii).

(8) If a performance evaluation of a continuous monitoring system was conducted, the results of that performance evaluation. If new operating limits were established during the performance evaluation, include your calculations for establishing those operating limits.

(9) If you met the requirements of § 60.4885(a)(3) and did not conduct a performance test during the reporting period, you must include the dates of the last three performance tests, a comparison of the emission level you achieved in the last three performance tests to the 75 percent emission limit threshold specified in § 60.4885(a)(3)(i)(B), and a statement as to whether there have been any process changes and whether the process change resulted in an increase in emissions.

(10) Documentation of periods when all qualified SSI unit operators were unavailable for more than 8 hours, but less than 2 weeks.

(11) Results of annual air pollution control device inspections recorded under § 60.4910(d) for the reporting period, including a description of repairs.

(12) If there were no periods during the reporting period when your continuous monitoring systems had a malfunction, a statement that there were no periods during which your continuous monitoring systems had a malfunction.

(13) If there were no periods during the reporting period when a continuous monitoring system was out of control, a statement that there were no periods during which your continuous monitoring systems were out of control.

(14) If there were no operator training deviations, a statement that there were no such deviations during the reporting period.

(15) If you did not make revisions to your site-specific monitoring plan during the reporting period, a statement that you did not make any revisions to your site-specific monitoring plan during the reporting period. If you made revisions to your site-specific monitoring plan during the reporting period, a copy of the revised plan.

(e) *Deviation reports.* (1) You must submit a deviation report if:

(i) Any recorded 4-hour rolling average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart.

(ii) Any recorded daily average sludge moisture content is outside the allowable range.

(iii) The bag leak detection system alarm sounds for more than 5 percent of the operating time for the 6-month reporting period.

(iv) Any recorded 4-hour rolling average emissions level is above the emission limit, if a continuous monitoring system is used to comply with an emission limit.

(v) Any opacity level recorded under § 60.4865(b)(5) that is above the opacity limit, if a continuous opacity monitoring system is used.

(vi) There are visible emissions of combustion ash from an ash conveying system for more than 5 percent of the hourly observation period.

(vii) A performance test was conducted that deviated from any emission limit in Table 1 to this subpart.

(viii) A continuous monitoring system was out of control.

(ix) You had a malfunction (*e.g.,* continuous monitoring system malfunction) that caused or may have caused any applicable emission limit to be exceeded.

(2) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

(3) For each deviation where you are using a continuous monitoring system to comply with an associated emission limit or operating limit, report the items described in paragraphs (e)(3)(i) through (viii) of this section.

(i) Company name and address.

(ii) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(iii) The calendar dates and times your unit deviated from the emission

limits, emission standards, or operating limits requirements.

(iv) The averaged and recorded data for those dates.

(v) Duration and cause of each deviation from the following:

(A) Emission limits, emission standards, operating limits, and your corrective actions.

(B) Bypass events and your corrective actions.

(vi) Dates, times, and causes for monitor downtime incidents.

(vii) A copy of the operating parameter monitoring data during each deviation and any test report that documents the emission levels.

(viii) If there were periods during which the continuous monitoring system had a malfunction or was out of control, you must include the following information for each deviation from an emission limit or operating limit:

(A) The date and time that each malfunction started and stopped.

(B) The date, time, and duration that each continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(C) The date, time, and duration that each continuous monitoring system was out of control, including start and end dates and hours and descriptions of corrective actions taken.

(D) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of malfunction, during a period when the system as out of control, or during another period.

(E) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(F) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(G) A summary of the total duration of continuous monitoring system downtime during the reporting period, and the total duration of continuous monitoring system downtime as a percent of the total operating time of the SSI unit at which the continuous monitoring system downtime occurred during that reporting period.

(H) An identification of each parameter and pollutant that was monitored at the SSI unit.

(I) A brief description of the SSI unit.

(J) A brief description of the continuous monitoring system.

(K) The date of the latest continuous monitoring system certification or audit.

(L) A description of any changes in continuous monitoring system, processes, or controls since the last reporting period.

(4) For each deviation where you are not using a continuous monitoring system to comply with the associated emission limit or operating limit, report the following items:

(i) Company name and address.

(ii) Statement by a responsible official with that official's name, title, and signature, certifying the accuracy of the content of the report.

(iii) The total operating time of each affected SSI during the reporting period.

(iv) The calendar dates and times your unit deviated from the emission limits, emission standard, or operating limits requirements.

(v) The averaged and recorded data for those dates.

(vi) Duration and cause of each deviation from the following:

(A) Emission limits, emission standard, and operating limits, and your corrective actions.

(B) Bypass events and your corrective actions.

(vii) A copy of any performance test report that showed a deviation from the emission limits or standard.

(viii) A brief description of any malfunction reported in paragraph (e)(1)(viii) of this section, including a description of actions taken during the malfunction to minimize emissions in accordance with 60.11(d) and to correct the malfunction.

(f) *Qualified operator deviation.* (1) If all qualified operators are not accessible for 2 weeks or more, you must take the two actions in paragraphs (f)(1)(i) and (ii) of this section.

(i) Submit a notification of the deviation within 10 days that includes the three items in paragraphs (f)(1)(i)(A) through (C) of this section.

(A) A statement of what caused the deviation.

(B) A description of actions taken to ensure that a qualified operator is accessible.

(C) The date when you anticipate that a qualified operator will be available.

(ii) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (f)(1)(ii)(A) through (C) of this section.

(A) A description of actions taken to ensure that a qualified operator is accessible.

(B) The date when you anticipate that a qualified operator will be accessible.

(C) Request for approval from the Administrator to continue operation of the SSI unit.

(2) If your unit was shut down by the Administrator, under the provisions of § 60.4835(b)(2)(i), due to a failure to provide an accessible qualified operator, you must notify the Administrator within 5 days of meeting § 60.4835(b)(2)(ii) that you are resuming operation.

(g) *Notification of a force majeure.* If a force majeure is about to occur, occurs, or has occurred for which you intend to assert a claim of force majeure:

(1) You must notify the Administrator, in writing as soon as practicable following the date you first knew, or through due diligence should have known that the event may cause or caused a delay in conducting a performance test beyond the regulatory deadline, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification must occur as soon as practicable.

(2) You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in conducting the performance test beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which you propose to conduct the performance test.

(h) *Other notifications and reports required.* You must submit other notifications as provided by § 60.7 and as follows:

(1) You must notify the Administrator 1 month before starting or stopping use of a continuous monitoring system for determining compliance with any emission limit.

(2) You must notify the Administrator at least 30 days prior to any performance test conducted to comply with the provisions of this subpart, to afford the Administrator the opportunity to have an observer present.

(3) As specified in § 60.4900(a)(8), you must notify the Administrator at least 7 days prior to the date of a rescheduled performance test for which notification was previously made in paragraph (h)(2) of this section.

(i) *Report submission form.* (1) Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

(2) After December 31, 2011, within 60 days after the date of completing each performance evaluation or performance test conducted to demonstrate compliance with this subpart, you must submit the relative accuracy test audit data and performance test data, except opacity, to EPA by successfully submitting the data electronically into EPA's Central Data Exchange by using the Electronic

Reporting Tool (*see http://www.epa.gov/ttn/chief/ert/ert_tool.html/*).

(j) *Changing report dates.* If the Administrator agrees, you may change the semi-annual or annual reporting dates. See § 60.19(c) for procedures to seek approval to change your reporting date.

Title V Operating Permits

§ 60.4920 Am I required to apply for and obtain a title V operating permit for my unit?

Yes, if you are subject to this subpart, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements for an exemption specified in § 60.4780.

§ 60.4925 When must I submit a title V permit application for my new SSI unit?

(a) If your new SSI unit subject to this subpart is not subject to an earlier permit application deadline, a complete title V permit application must be submitted on or before one of the dates specified in paragraph (a)(1) or (2) of this section. (See section 503(c) of the Clean Air Act and 40 CFR 70.5(a)(1)(i) and 40 CFR 71.5(a)(1)(i).)

(1) For an SSI unit that commenced operation as a new SSI unit as of [THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], then a complete title V permit application must be submitted not later than [THE DATE 1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(2) For an SSI unit that does not commence operation as a new SSI unit until after [THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], then a complete title V permit application must be submitted not later than 12 months after the date the unit commences operation as a new source.

(b) If your new SSI unit subject to this subpart is subject to title V as a result of some triggering requirement(s) other than this subpart (for example, a unit subject to this subpart may be a major source or part of a major source), then your unit may be required to apply for a title V permit prior to the deadlines specified in paragraph (a) of this section. If more than one requirement triggers a source's obligation to apply for a title V permit, the 12-month timeframe for filing a title V permit application is triggered by the requirement that first causes the source to be subject to title V. (*See* section 503(c) of the Clean Air Act and 40 CFR 70.3(a) and (b), 40 CFR 70.5(a)(1)(i), 40 CFR 71.3(a) and (b), and 40 CFR 71.5(a)(1)(i).)

(c) A "complete" title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 40 CFR 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. (See sections 503(d) and 502(a) of the Clean Air Act and 40 CFR 70.7(b) and 40 CFR 71.7(b).)

Definitions

§ 60.4930 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and § 60.2.

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

Auxiliary fuel means natural gas, liquefied petroleum gas, fuel oil, or diesel fuel.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.,* baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Bypass stack means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Co-fired combustor means a unit combusting sewage sludge or dewatered sludge pellets with other fuels or wastes (*e.g.,* coal, clean biomass, municipal solid waste, commercial or institutional waste, hospital medical infectious waste, unused pharmaceuticals, other solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of sewage sludge.

Continuous automated sampling system means the total equipment and procedures for automated sample collection and sample recovery/analysis to determine a pollutant concentration or emission rate by collecting a single integrated sample(s) or multiple integrated sample(s) of the pollutant (or diluent gas) for subsequent on- or off-site analysis; integrated sample(s) collected are representative of the emissions for the sample time as specified by the applicable requirement.

Continuous emissions monitoring system means a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.

Continuous monitoring system (CMS) means a continuous emissions monitoring system, continuous automated sampling system, continuous parameter monitoring system, continuous opacity monitoring system, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by this subpart. The term refers to the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

Continuous parameter monitoring system means a monitoring system for continuously measuring and recording operating conditions associated with air pollution control device systems (*e.g.,* temperature, pressure, and power).

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limit, operating limit, or operator qualification and accessibility requirements.

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

Dioxins/furans means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Electrostatic precipitator or wet electrostatic precipitator means an air pollution control device that uses both electrical forces and, if applicable, water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Fluidized bed incinerator means an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. During periods of malfunction the operator shall operate within established emissions and operating limits and shall continue monitoring of all applicable operating parameters until all waste has been combusted or until the malfunction ceases, whichever comes first.

Maximum feed rate means 110 percent of the highest 3-hour average dry charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits or standards.

Modification means a change to an SSI unit later than [THE DATE 6 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the SSI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the SSI unit used to calculate these costs, see the definition of SSI unit.

(2) Any physical change in the SSI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Modified sewage sludge incineration (SSI) unit means an SSI unit that undergoes a modification, as defined in this section.

Multiple hearth incinerator means a circular steel furnace that contains a number of solid refractory hearths and a central rotating shaft; rabble arms that are designed to slowly rake the sludge on the hearth are attached to the rotating shaft. Dewatered sludge enters at the top and proceeds downward through the furnace from hearth to hearth, pushed along by the rabble arms.

New sewage sludge incineration unit means an SSI unit the construction of which is commenced after October 14, 2010 which would be applicable to such unit or a modified solid waste incineration unit.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Operating day means a 24-hour period between 12:00 midnight and the following midnight during which any amount of sewage sludge is combusted at any time in the SSI unit.

Particulate matter means filterable particulate matter emitted from SSI units as measured by Method 5 at 40 CFR part 60, appendix A–3 or Methods 26A or 29 at 40 CFR part 60, appendix A–8.

Power input to the electrostatic precipitator means the product of the test-run average secondary voltage and the test-run average secondary amperage to the electrostatic precipitator collection plates.

Process change means that any of the following have occurred:

(1) A change in the process employed at the wastewater treatment facility associated with the affected SSI unit (*e.g.,* the addition of tertiary treatment at the facility, which changes the method used for disposing of process solids and processing of the sludge prior to incineration).

(2) A change in the air pollution control devices used to comply with the emission limits for the affected SSI unit (*e.g.,* change in the sorbent used for activated carbon injection).

(3) An allowable increase in the quantity of wastewater received from an industrial source by the wastewater treatment facility.

Sewage sludge means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incineration unit or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

Sewage sludge feed rate means the rate at which sewage sludge is fed into the incinerator unit.

Sewage sludge incineration (SSI) unit means an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter. Sewage sludge incineration unit designs include fluidized bed and multiple hearth.

Shutdown means the period of time after all sewage sludge has been combusted in the primary chamber.

Solid waste means any garbage, refuse, sewage sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Standard conditions, when referring to units of measure, means a temperature of 68 °F (20 °C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup means the period of time between the activation, including the firing of fuels (*e.g.,* natural gas or distillate oil), of the system and the first feed to the unit.

Toxic equivalency means the product of the concentration of an individual dioxin congener in an environmental mixture and the corresponding estimate of the compound-specific toxicity relative to tetrachlorinated dibenzo-p-dioxin, referred to as the toxic equivalency factor for that compound. Table 3 to this subpart lists the toxic equivalency factors.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

You means the owner or operator of an SSI unit that meets the criteria in § 60.4770.

TABLE 1 TO SUBPART LLLL OF PART 60—EMISSION LIMITS AND STANDARDS FOR NEW SEWAGE SLUDGE INCINERATION UNITS

For the air pollutant	You must meet this emission limit [a]	Using these averaging methods and minimum sampling volumes or durations	And determining compliance using this method
Particulate matter	4.1 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 5 at 40 CFR part 60, appendix A–3; Method 26A or Method 29 at 40 CFR part 60, appendix A–8).
Hydrogen chloride	0.12 parts per million by dry volume	3-run average (For Method 26, collect a minimum volume of 200 liters per run. For Method 26A, collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Carbon monoxide	7.4 parts per million by dry volume	4-hour rolling average (using 1-hour averages of data).	Continuous emissions monitoring system.
Dioxins/furans (total mass basis).	0.024 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.0022 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Mercury	0.0010 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02, collect a minimum volume of 3 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 at 40 CFR part 60, appendix A–8; Method 30B at 40 CFR part 60, appendix A (when published in the **Federal Register**); or ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method).
Oxides of nitrogen	26 parts per million by dry volume	3-run average (Collect sample for a minimum duration of one hour per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Sulfur dioxide	2.0 parts per million by dry volume	3-run average (For Method 6, collect a minimum volume of 200 liters per run. For Method 6C, collect sample for a minimum duration of one hour per run).	Performance test (Method 6 or 6C at 40 CFR part 40, appendix A–4; or ANSI/ASME PTC–19.10–1981 Flue and Exhaust Gas Analysis [Part 10, Instruments and Apparatus]).
Cadmium	0.00051 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Lead	0.00053 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Opacity	0 percent	6-minute averages, three 1-hour observation periods.	Performance test (Method 9 at 40 CFR part 60, appendix A–4).
Fugitive emissions from ash handling.	Visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods	Visible emission test (Method 22 of appendix A–7 of this part).

[a] All emission limits (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 2—TO SUBPART LLLL OF PART 60—OPERATING PARAMETERS FOR NEW SEWAGE SLUDGE INCINERATION UNITS [a]

For these operating parameters	You must establish these operating limits	And monitor using these minimum frequencies		
		Data measurement	Data recording [b]	Averaging time for compliance
All SSI units				
Dry sludge feed rate	Maximum dry sludge feed rate	Continuous	Hourly	4-hour rolling.[c]
Combustion chamber temperature or afterburner temperature.	Minimum combustion temperature or afterburner temperature.	Continuous	Every 15 minutes	4-hour rolling.[c]
Sludge moisture content	Range of moisture content (percent)	Composite of three samples taken 6 hours apart.	Daily	Daily.

TABLE 2—TO SUBPART LLLL OF PART 60—OPERATING PARAMETERS FOR NEW SEWAGE SLUDGE INCINERATION UNITS [a]—Continued

For these operating parameters	You must establish these operating limits	And monitor using these minimum frequencies		
		Data measurement	Data recording [b]	Averaging time for compliance
Scrubber				
Pressure drop across each wet scrubber or amperage to each wet scrubber.	Minimum pressure drop or minimum amperage.	Continuous	Every 15 minutes	4-hour rolling.[c]
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	4-hour rolling.[c]
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	4-hour rolling.[c]
Fabric Filter				
Alarm time of the bag leak detection system alarm.	Maximum alarm time of the bag leak detection system alarm (this operating limit is provided in § 60.4850 and is not established on a site-specific basis)			
Electrostatic precipitator				
Secondary voltage of the electrostatic precipitator collection plates. Secondary amperage of the electrostatic precipitator collection plates.	Minimum power input to the electrostatic precipitator collection plates.	Continuous	Hourly	4-hour rolling.[c]
Effluent water flow rate at the outlet of the electrostatic precipitator.	Maximum effluent water flow rate at the outlet of the electrostatic precipitator.	Hourly	Hourly	4-hour rolling.[c]
Activated carbon injection				
Mercury sorbent injection rate	Minimum mercury sorbent injection rate	Hourly	Hourly	4-hour rolling.[c]
Dioxin/furan sorbent injection rate	Minimum dioxin/furan sorbent injection rate.			
Carrier gas flow rate or carrier gas pressure drop.	Minimum carrier gas flow rate or minimum carrier gas pressure drop.	Continuous	Every 15 minutes	4-hour rolling.[c]

[a] As specified in § 60.4870, you may use a continuous emissions monitoring system, continuous opacity monitoring system, or continuous automated sampling system in lieu of establishing certain operating limits.

[b] This recording time refers to the frequency that the continuous monitor or other measuring device initially records data. For all data recorded every 15 minutes, you must calculate hourly arithmetic averages. For all parameters except sludge moisture content, you use hourly averages to calculate the 4-hour rolling averages to demonstrate compliance. You maintain records of 1-hour averages.

[c] Calculated each hour as the average of the previous 4 operating hours.

TABLE 3—TO SUBPART LLLL OF PART 60—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	1
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.0003
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.3
1,2,3,7,8-pentachlorinated dibenzofuran	0.03
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.0003

TABLE 4—TO SUBPART LLLL OF PART 60—SUMMARY OF REPORTING REQUIREMENTS FOR NEW SEWAGE SLUDGE INCINERATION UNITS [a]

Report	Due date	Contents	Reference
Notification of construction	Prior to commencing construction	• Statement of intent to construct • Anticipated date of commencement of construction.	§ 60.4915(a)

TABLE 4—TO SUBPART LLLL OF PART 60—SUMMARY OF REPORTING REQUIREMENTS FOR NEW SEWAGE SLUDGE INCINERATION UNITS [a]—Continued

Report	Due date	Contents	Reference
Notification of initial startup	Prior to initial startup	• Documentation for siting requirements. • Anticipated date of initial startup. • Maximum design dry sewage sludge burning capacity. • Anticipated maximum feed rate. • If applicable, the petition for site-specific operating limits. • Anticipated date of initial startup. • Site-specific monitoring plan.	§ 60.4915(b)
Initial compliance report	No later than 60 days following the initial performance test.	• Company name and address • Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report. • Date of report. • Complete test report for the initial performance test. • Results of CMS [b] performance evaluation. • The values for the site-specific operating limits and the calculations and methods used to establish each operating limit. • Documentation of installation of bag leak detection system for fabric filter. • Results of initial air pollution control device inspection, including a description of repairs.	§ 60.4915(c)
Annual compliance report	No later than 12 months following the submission of the initial compliance report; subsequent reports are to be submitted no more than 12 months following the previous report.	• Company name and address • Statement and signature by responsible official. • Date and beginning and ending dates of report. • If a performance test was conducted during the reporting period, the results of the test, including any new operating limits and associated calculations and the type of activated carbon used, if applicable. • For each pollutant and operating parameter recorded using a CMS, the highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable. • If no deviations from emission limits, emission standards, or operating limits occurred, a statement that no deviations occurred. • If a fabric filter is used, the date, time, and duration of alarms. • If a performance evaluation of a CMS was conducted, the results, including any new operating limits and their associated calculations. • If you met the requirements of § 60.4885(a)(3) and did not conduct a performance test, include the dates of the last three performance tests, a comparison to the 75 percent emission limit threshold of the emission level achieved in the last three performance tests, and a statement as to whether there have been any process changes. • Documentation of periods when all qualified SSI unit operators were unavailable for more than 8 hours but less than 2 weeks.	§§ 60.4915(d)

TABLE 4—TO SUBPART LLLL OF PART 60—SUMMARY OF REPORTING REQUIREMENTS FOR NEW SEWAGE SLUDGE INCINERATION UNITS [a]—Continued

Report	Due date	Contents	Reference
		• Results of annual pollutions control device inspections, including description of repairs. • If there were no periods during which your CMSs had malfunctions, a statement that there were no periods during which your CMSs had malfunctions. • If there were no periods during which your CMSs were out of control, a statement that there were no periods during which your CMSs were out of control. • If there were no operator training deviations, a statement that there were no such deviations. • Information on monitoring plan revisions, including a copy of any revised monitoring plan.	
Deviation report (deviations from emission limits, emission standards, or operating limits, as specified in § 60.4915(e)(1)).	By August 1 of a calendar year for data collected during the first half of the calendar year; by February 1 of a calendar year for data collected during the second half of the calendar year.	*If using a CMS:* • Company name and address. • Statement by a responsible official. • The calendar dates and times your unit deviated from the emission limits or operating limits. • The averaged and recorded data for those dates. • Duration and cause of each deviation. • Dates, times, and causes for monitor downtime incidents. • A copy of the operating parameter monitoring data during each deviation and any test report that documents the emission levels. • For periods of CMS malfunction or when a CMS was out of control, you must include the information specified in § 60.4915(e)(3)(viii). *If not using a CMS:* • Company name and address. • Statement by a responsible official. • The total operating time of each affected SSI. • The calendar dates and times your unit deviated from the emission limits, emission standard, or operating limits. • The averaged and recorded data for those dates. • Duration and cause of each deviation. • A copy of any performance test report that showed a deviation from the emission limits or standards. • A brief description of any malfunction, a description of actions taken during the malfunction to minimize emissions, and corrective action taken.	§ 60.4915(e)
Notification of qualified operator deviation (if all qualified operators are not accessible for 2 weeks or more).	Within 10 days of deviation	• Statement of cause of deviation ..... • Description of actions taken to ensure that a qualified operator will be available. • The date when a qualified operator will be accessible.	§ 60.4915(f)
Notification of status of qualified operator deviation.	Every 4 weeks following notification of deviation.	• Description of actions taken to ensure that a qualified operator is accessible. • The date when you anticipate that a qualified operator will be accessible. • Request for approval to continue operation.	§ 60.4915(f)

TABLE 4—TO SUBPART LLLL OF PART 60—SUMMARY OF REPORTING REQUIREMENTS FOR NEW SEWAGE SLUDGE INCINERATION UNITS [a]—Continued

Report	Due date	Contents	Reference
Notification of resumed operation following shutdown (due to qualified operator deviation and as specified in § 60.4835(b)(2)(i).	Within 5 days of obtaining a qualified operator and resuming operation.	• Notification that you have obtained a qualified operator and are resuming operation.	§ 60.4915(f)
Notification of a force majeure	As soon as practicable following the date you first knew, or through due diligence should have known that the event may cause or caused a delay in conducting a performance test beyond the regulatory deadline; the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification must occur as soon as practicable.	• Description of the force majeure event • Rationale for attributing the delay in conducting the performance test beyond the regulatory deadline to the force majeure. • Description of the measures taken or to be taken to minimize the delay. • Identification of the date by which you propose to conduct the performance test.	§ 60.4915(g)
Notification of intent to start or stop use of a CMS.	1 month before starting or stopping use of a CMS.	• Intent to start or stop use of a CMS	§ 60.4915(h)
Notification of intent to conduct a performance test.	At least 30 days prior to the performance test.	• Intent to conduct a performance test to comply with this subpart.	
Notification of intent to conduct a rescheduled performance test.	At least 7 days prior to the date of a rescheduled performance test.	• Intent to conduct a rescheduled performance test to comply with this subpart.	

[a] This table is only a summary, see the referenced sections of the rule for the complete requirements.
[b] CMS means continuous monitoring system.

Subpart MMMM—Emission Guidelines and Compliance Times for Existing Sewage Sludge Incineration Units

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Introduction

§ 60.5000 What is the purpose of this subpart?

This subpart establishes emission guidelines and compliance schedules for the control of emissions from sewage sludge incineration (SSI) units. The pollutants addressed by these emission guidelines are listed in Tables 2 and 3 to this subpart. These emission guidelines are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of this part. To the extent any requirement of this subpart is inconsistent with the requirements of subpart A of this part, the requirements of this subpart will apply.

§ 60.5005 Am I affected by this subpart?

(a) If you are the Administrator of an air quality program in a State or United States protectorate with one or more SSI units that commenced construction on or before October 14, 2010, you must submit a State plan to U.S. Environmental Protection Agency (EPA) that implements the emission guidelines contained in this subpart.

(b) You must submit the State plan to EPA by [THE DATE 12 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

§ 60.5010 Is a State plan required for all states?

No. You are not required to submit a State plan if there are no SSI units for which construction commenced on or before October 14, 2010 in your State, and you submit a negative declaration letter in place of the State plan.

§ 60.5015 What must I include in my State plan?

(a) You must include the nine items described in paragraphs (a)(1) through (9) of this section in your State plan.

(1) Inventory of affected SSI units, including those that have ceased operation but have not been dismantled.

(2) Inventory of emissions from affected SSI units in your State.

(3) Compliance schedules for each affected SSI unit.

(4) Emission limits, emission standards, operator training and qualification requirements, and operating limits for affected SSI units that are at least as protective as the emission guidelines contained in this subpart.

(5) Performance testing, recordkeeping, and reporting requirements.

(6) Certification that the hearing on the State plan was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

(7) Provision for State progress reports to EPA.

(8) Identification of enforceable State mechanisms that you selected for implementing the emission guidelines of this subpart.

(9) Demonstration of your State's legal authority to carry out the sections 111(d) and 129 State plan.

(b) Your State plan may deviate from the format and content of the emission guidelines contained in this subpart. However, if your State plan does deviate in content, you must demonstrate that your State plan is at least as protective as the emission guidelines contained in this subpart. Your State plan must address regulatory applicability, increments of progress for retrofit, operator training and qualification, emission limits and standards, performance testing, operating limits, monitoring, and recordkeeping and reporting.

(c) You must follow the requirements of subpart B of this part (Adoption and Submittal of State plans for Designated Facilities) in your State plan.

§ 60.5020 Is there an approval process for my State plan?

Yes. The EPA will review your State plan according to § 60.27.

§ 60.5025 What if my State plan is not approvable?

If you do not submit an approvable State plan (or a negative declaration letter) by [THE DATE 24 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], EPA will develop a Federal plan according to § 60.27 to implement the emission guidelines contained in this subpart. Owners and operators of SSI units not covered by an approved State plan must comply with the Federal plan. The Federal plan is an interim action and will be automatically withdrawn when your State plan is approved.

§ 60.5030 Is there an approval process for a negative declaration letter?

No. The EPA has no formal review process for negative declaration letters. Once your negative declaration letter has been received, EPA will place a copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, an SSI unit for which construction commenced on or before October 14, 2010 is found in your State, the Federal plan implementing the emission guidelines contained in this subpart would automatically apply to that SSI unit until your State plan is approved.

§ 60.5035 What compliance schedule must I include in my State plan?

(a) For SSI units that commenced construction on or before October 14, 2010, your State plan must include compliance schedules that require SSI units to achieve final compliance as expeditiously as practicable after approval of the State plan but not later than the earlier of the two dates specified in paragraphs (a)(1) and (2) of this section.

(1) [THE DATE 5 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(2) Three years after the effective date of State plan approval.

(b) For compliance schedules that extend more than 1 year following the effective date of State plan approval, State plans must include dates for enforceable increments of progress as specified in § 60.5090.

§ 60.5040 Are there any State plan requirements for this subpart that apply instead of the requirements specified in subpart B?

Yes. Subpart B establishes general requirements for developing and processing section 111(d) State plans. This subpart applies instead of the requirements in subpart B of this part, as specified in paragraphs (a) and (b) of this section:

(a) State plans developed to implement this subpart must be as protective as the emission guidelines contained in this subpart. State plans must require all SSI units to comply by the dates specified in § 60.5035. This applies instead of the option for case-by-case less stringent emission standards and longer compliance schedules in § 60.24(f).

(b) State plans developed to implement this subpart are required to include two increments of progress for the affected SSI units. These two minimum increments are the final control plan submittal date and final compliance date in § 60.21(h)(1) and (5). This applies instead of the requirement of § 60.24(e)(1) that would require a State plan to include all five increments of progress for all SSI units.

§ 60.5045 In lieu of a State plan submittal, are there other acceptable option(s) for a State to meet its section 111(d)/129 (b)(2) obligations?

Yes, a State may meet its Clean Air Act section 111(d)/129 obligations by submitting an acceptable written request for delegation of the Federal plan that meets the requirements of this section. This is the only other option for a State to meet its section 111(d)/129 obligations.

(a) An acceptable Federal plan delegation request must include the following:

(1) A demonstration of adequate resources and legal authority to administer and enforce the Federal plan.

(2) The items under § 60.5015(a)(1), (2), and (7).

(3) Certification that the hearing on the State delegation request, similar to the hearing for a State plan submittal, was held, a list of witnesses and their organizational affiliations, if any, appearing at the hearing, and a brief written summary of each presentation or written submission.

(4) A commitment to enter into a Memorandum of Agreement with the Regional Administrator that sets forth the terms, conditions, and effective date of the delegation and that serves as the mechanism for the transfer of authority. Additional guidance and information is given in EPA's Delegation Manual, Item 7–139, Implementation and Enforcement of 111(d)(2) and 111(d)/(2)/129 (b)(3) Federal plans.

(b) A State with an already approved SSI Clean Air Act section 111(d)/129 State plan is not precluded from receiving EPA approval of a delegation request for the revised Federal plan, provided the requirements of paragraph (a) of this section are met, and at the time of the delegation request, the State also requests withdrawal of EPA's previous State plan approval.

(c) A State's Clean Air Act section 111(d)/129 obligations are separate from its obligations under title V of the Clean Air Act.

§ 60.5050 What authorities will not be delegated to State, local, or tribal agencies?

The authorities that will not be delegated to State, local, or tribal agencies are specified in paragraphs (a) through (g) of this section.

(a) Approval of alternatives to the emission limits and standards in Tables 2 and 3 to this subpart and operating limits established under § 60.5175 or § 60.5190.

(b) Approval of major alternatives to test methods.

(c) Approval of major alternatives to monitoring.

(d) Approval of major alternatives to recordkeeping and reporting.

(e) The requirements in § 60.5175.

(f) The requirements in § 60.5155(b)(2).

(g) Performance test and data reduction waivers under § 60.8(b).

§ 60.5055 Does this subpart directly affect SSI unit owners and operators in my State?

(a) No. This subpart does not directly affect SSI unit owners and operators in your State. However, SSI unit owners and operators must comply with the State plan you develop to implement the emission guidelines contained in this subpart. States may choose to incorporate the model rule text directly in their State plan.

(b) If you do not submit an approvable plan to implement and enforce the guidelines contained in this subpart by [THE DATE 1 YEAR AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], EPA will implement and enforce a Federal plan, as provided in § 60.5025, to ensure that each unit within your State that commenced construction on or before October 14, 2010 reaches compliance with all the provisions of this subpart by the dates specified in § 60.5035.

Applicability of State Plans

§ 60.5060 What SSI units must I address in my State plan?

(a) Your State plan must address SSI units that meet all three criteria described in paragraphs (a)(1) through (3) of this section.

(1) SSI units in your State that commenced construction on or before October 14, 2010.

(2) SSI units that meet the definition of an SSI unit as defined in § 60.5250.

(3) SSI units not exempt under § 60.5065.

(b) If the owner or operator of an SSI unit makes changes that meet the definition of modification after [THE DATE 6 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], the SSI unit becomes subject to subpart LLLL of this part and the State plan no longer applies to that unit.

(c) If the owner or operator of an SSI unit makes physical or operational changes to an SSI unit for which construction commenced on or before [THE DATE 6 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] primarily to comply with your State plan, subpart LLLL of this part does not apply to that unit. Such changes do not qualify as modifications under subpart LLLL of this part.

§ 60.5065 What SSI units are exempt from my State plan?

This subpart exempts combustion units that incinerate sewage sludge that are located at an industrial or commercial facility subject to subpart CCCC of this part, provided the owner or operator of such a combustion unit notifies the Administrator of an exemption claim under this section.

Use of Model Rule

§ 60.5070 What is the "model rule" in this subpart?

(a) The model rule is the portion of these emission guidelines (§§ 60.5085 through 60.5250) that addresses the regulatory requirements applicable to SSI units. The model rule provides these requirements in regulation format. You must develop a State plan that is at least as protective as the model rule. You may use the model rule language as part of your State plan. Alternative language may be used in your State plan if you demonstrate that the alternative language is at least as protective as the model rule contained in this subpart.

(b) In the model rule of §§ 60.5085 through 60.5250, "you" and "Administrator" have the meaning specified in § 60.5250.

§ 60.5075 How does the model rule relate to the required elements of my State plan?

Use the model rule to satisfy the State plan requirements specified in § 60.5015(a)(3) through (5).

§ 60.5080 What are the principal components of the model rule?

The model rule contains the nine major components listed in paragraphs (a) through (i) of this section.

(a) Increments of progress toward compliance.

(b) Operator training and qualification.

(c) Emission limits, emission standards, and operating limits.

(d) Initial compliance requirements.

(e) Continuous compliance requirements.

(f) Performance testing, monitoring, and calibration requirements.

(g) Recordkeeping and reporting.

(h) Definitions.

(i) Tables.

Model Rule—Increments of Progress

§ 60.5085 What are my requirements for meeting increments of progress and achieving final compliance?

If you plan to achieve compliance more than 1 year following the effective date of State plan approval, you must meet the two increments of progress specified in paragraphs (a) and (b) of this section.

(a) Submit a final control plan.

(b) Achieve final compliance.

§ 60.5090 When must I complete each increment of progress?

Table 1 to this subpart specifies compliance dates for each increment of progress.

§ 60.5095 What must I include in the notifications of achievement of increments of progress?

Your notification of achievement of increments of progress must include the three items specified in paragraphs (a) through (c) of this section.

(a) Notification that the increment of progress has been achieved.

(b) Any items required to be submitted with each increment of progress.

(c) Signature of the owner or operator of the SSI unit.

§ 60.5100 When must I submit the notifications of achievement of increments of progress?

Notifications for achieving increments of progress must be postmarked no later than 10 business days after the compliance date for the increment.

§ 60.5105 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the date for that increment of progress in Table 1 to this subpart. You must inform the Administrator that you did not meet the increment, and you must continue to submit reports each subsequent calendar month until the increment of progress is met.

§ 60.5110 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must satisfy the two requirements specified in paragraphs (a) and (b) of this section.

(a) Submit the final control plan that includes the four items described in paragraphs (a)(1) through (4) of this section.

(1) A description of the devices for air pollution control and process changes that you will use to comply with the emission limits and standards and other requirements of this subpart.

(2) The type(s) of waste to be burned, if waste other than sewage sludge is burned in the unit.

(3) The maximum design sewage sludge burning capacity.

(4) If applicable, the petition for site-specific operating limits under § 60.5175.

(b) Maintain an onsite copy of the final control plan.

§ 60.5115 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete all process changes and retrofit construction of control devices, as specified in the final control plan, so that, if the affected SSI unit is brought online, all necessary process changes and air pollution control devices would operate as designed.

§ 60.5120 What must I do if I close my SSI unit and then restart it?

(a) If you close your SSI unit but will restart it prior to the final compliance date in your State plan, you must meet the increments of progress specified in § 60.5085.

(b) If you close your SSI unit but will restart it after your final compliance date, you must complete emission control retrofits and meet the emission limits, emission standards, and operating limits on the date your unit restarts operation.

§ 60.5125 What must I do if I plan to permanently close my SSI unit and not restart it?

If you plan to close your SSI unit rather than comply with the State plan, submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

Model Rule—Operator Training and Qualification

§ 60.5130 What are the operator training and qualification requirements?

(a) An SSI unit cannot be operated unless a fully trained and qualified SSI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified SSI unit operator may operate the SSI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified SSI unit operators are temporarily not accessible, you must follow the procedures in § 60.5155.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the 10 subjects listed in paragraphs (c)(1)(i) through (x) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, sewage sludge feeding, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (if applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Actions to prevent malfunctions or to prevent conditions that may lead to malfunctions.

(viii) Bottom and fly ash characteristics and handling procedures.

(ix) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(x) Pollution prevention.

(2) An examination designed and administered by the State-approved program.

(3) Written material covering the training course topics that may serve as reference material following completion of the course.

§ 60.5135 When must the operator training course be completed?

The operator training course must be completed by the later of the three dates specified in paragraphs (a) through (c) of this section.

(a) The final compliance date (Increment 2).

(b) Six months after your SSI unit startup.

(c) Six months after an employee assumes responsibility for operating the SSI unit or assumes responsibility for supervising the operation of the SSI unit.

§ 60.5140 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 60.5130(b).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 60.5130(c)(2).

§ 60.5145 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, sewage sludge feeding, and ash handling.

(c) Inspection and maintenance.

(d) Prevention of malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 60.5150 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 60.5145.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 60.5140(a).

§ 60.5155 What if all the qualified operators are temporarily not accessible?

If a qualified operator is not at the facility and cannot be at the facility within 1 hour, you must meet the criteria specified in either paragraph (a) or (b) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When a qualified operator is not accessible for more than 8 hours, the SSI unit may be operated for less than 2 weeks by other plant personnel who are familiar with the operation of the SSI unit who have completed a review of the information specified in § 60.5160 within the past 12 months. However, you must record the period when a qualified operator was not accessible and include this deviation in the annual report as specified under § 60.5235(d).

(b) When a qualified operator is not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (b)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, State what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to the Administrator every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible, and requesting approval from the Administrator to continue operation of the SSI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (b)(1) of this section.

(i) If the Administrator notifies you that your request to continue operation of the SSI unit is disapproved, the SSI unit may continue operation for 30 days, and then must cease operation.

(ii) Operation of the unit may resume if a qualified operator is accessible as required under § 60.5130(a) and you notify the Administrator within 5 days of having resumed operations and of having a qualified operator accessible.

§ 60.5160 What site-specific documentation is required and how often must it be reviewed by qualified SSI operators and other plant personnel who may operate the unit according to the provisions of § 60.5155(a)?

(a) You must maintain at the facility the documentation of the operator training procedures specified under § 60.5230(c)(1) and make the documentation readily accessible to all SSI unit operators.

(b) You must establish a program for reviewing the information listed in § 60.5230(c)(1) with each qualified incinerator operator and other plant personnel who may operate the unit according to the provisions of § 60.5155(a), according to the following schedule:

(1) The initial review of the information listed in § 60.5230(c)(1) must be conducted within 6 months after the effective date of this subpart or prior to an employee's assumption of responsibilities for operation of the SSI unit, whichever date is later.

(2) Subsequent annual reviews of the information listed in § 60.5230(c)(1) must be conducted no later than 12 months following the previous review.

Model Rule—Emission Limits, Emission Standards, and Operating Limits

§ 60.5165 What emission limits and standards must I meet and by when?

You must meet the emission limits and standards specified in Table 2 or 3 to this subpart by the final compliance date under the approved State plan, Federal plan, or delegation, as applicable. The emission limits and standards apply at all times the unit is operating, including, and not limited to, periods of startup, shutdown, and malfunction. The emission limits and standards apply to emissions from a bypass stack or vent while sewage sludge is being charged to the SSI unit.

§ 60.5170 What operating limits must I meet and by when?

You must meet the operating limits specified in paragraphs (a) through (c) of this section, according to the schedule specified in paragraphs (d) and (e) of this section. The operating parameters are listed in Table 4 to this subpart. The operating limits apply at all times the unit is charging sewage sludge, including periods of malfunction.

(a) You must meet site-specific operating limits for maximum dry sludge feed rate, sludge moisture content, and minimum temperature of

the combustion chamber (or afterburner combustion chamber) that you establish in § 60.5190.

(b) If you use a wet scrubber, electrostatic precipitator, activated carbon injection, or afterburner to comply with an emission limit, you must meet the site-specific operating limits that you establish in § 60.5190 for each operating parameter associated with each air pollution control device.

(c) If you use a fabric filter to comply with the emission limits, you must install the bag leak detection system specified in § 60.5225(b)(3)(i) and operate the bag leak detection system such that the alarm does not sound more than 5 percent of the operating time during a 6-month period. You must calculate the alarm time as specified in § 60.5190.

(d) You must meet the operating limits specified in paragraphs (a) through (c) of this section by the final compliance date under the approved State plan, Federal plan, or delegation, as applicable.

(e) For the operating limits specified in paragraphs (a) and (b), you may conduct a repeat performance test at any time to establish new values for the operating limits to apply from that point forward. You must confirm or reestablish operating limits during:

(1) Annual performance tests required under § 60.5205(a).

(2) Performance tests required under § 60.5205(a)(2).

(3) Periodic performance evaluations required under § 60.5205(b)(5) to meet the operating limits specified in paragraph (a) of this section.

§ 60.5175 How do I establish operating limits if I do not use a wet scrubber, fabric filter, electrostatic precipitator, activated carbon injection, or afterburner, or if I limit emissions in some other manner, to comply with the emission limits?

If you use an air pollution control device other than a wet scrubber, fabric filter, electrostatic precipitator, activated carbon injection, or afterburner, or limit emissions in some other manner (*e.g.,* materials balance) to comply with the emission limits in § 60.5165, you must meet the requirements in paragraphs (a) and (b) of this section.

(a) Establish an operating limit each for maximum dry sludge feed rate, sludge moisture content, and minimum temperature of the combustion chamber (or afterburner combustion chamber) according to § 60.5190.

(b) Petition the Administrator for specific operating parameters, operating limits, and averaging periods to be established during the initial performance test and to be monitored continuously thereafter.

(1) You must not conduct the initial performance test until after the petition has been approved by the Administrator, and you must comply with the operating limits as written, pending approval by the Administrator.

(2) Your petition must include the five items listed in paragraphs (b)(2)(i) through (v) of this section.

(i) Identification of the specific parameters you propose to monitor.

(ii) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(iii) A discussion of how you will establish the upper and/or lower values for these parameters that will establish the operating limits on these parameters, including a discussion of the averaging periods associated with those parameters for determining compliance.

(iv) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(v) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 60.5180 Do the emission limits, emission standards, and operating limits apply during periods of startup, shutdown, and malfunction?

The emission limits and standards apply at all times, including periods of startup, shutdown and malfunction. The operating limits apply at all times the unit is charging sewage sludge, including periods of malfunction.

§ 60.5181 How do I establish an affirmative defense for exceedance of an emission limit or standard during malfunction?

In response to an action to enforce the standards set forth in paragraph § 60.5165 you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined in § 60.2. Appropriate penalties may be assessed; however, if the respondent fails to meet its burden of proving all of the requirements in the affirmative defense, then the affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that the conditions in paragraphs (a)(1) through (9) of this section are met.

(1) The excess emissions meet the conditions in paragraphs (a)(1)(i) through (iv) of this section.

(i) Were caused by a sudden, short, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner.

(ii) Could not have been prevented through careful planning, proper design or better operation and maintenance practices.

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for.

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Offshift and overtime labor were used, to the extent practicable to make these repairs.

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions.

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, severe personal injury, or severe property damage.

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health.

(6) All emissions monitoring and control systems were kept in operation if at all possible.

(7) Your actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs.

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions.

(9) You have prepared a written root cause analysis to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) If your SSI unit experiences an exceedance of its emission limit(s) during a malfunction, you must notify

the Administrator by telephone or facsimile (fax) transmission as soon as possible, but no later than 2 business days after the initial occurrence of the malfunction, if you wish to avail yourself of an affirmative defense to civil penalties for that malfunction. If you seek to assert an affirmative defense, you must also submit a written report to the Administrator within 30 days of the initial occurrence of the exceedance of the standard in § 60.5165 to demonstrate, with all necessary supporting documentation, that you have met the requirements set forth in paragraph (a) of this section.

Model Rule—Initial Compliance Requirements

§ 60.5185 How and when do I demonstrate initial compliance with the emission limits and standards?

To demonstrate initial compliance with the emission limits and standards in Table 2 or 3 to this subpart, use the procedures specified in paragraph (a) of this section. In lieu of using the procedures specified in paragraph (a) of this section, you have the option to demonstrate initial compliance using the procedures specified in paragraph (b) of this section for particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and opacity. You must meet the requirements of paragraphs (a) and (b) of this section, as applicable, and paragraphs (c) through (e) of this section, according to the performance testing, monitoring, and calibration requirements in § 60.5220(a) and (b).

(a) Demonstrate initial compliance using the performance test required in § 60.8. You must demonstrate that your SSI unit meets the emission limits and standards specified in Table 2 or 3 to this subpart for particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, opacity, and fugitive emissions from ash handling using the performance test. The initial performance test must be conducted using the test methods, averaging methods, and minimum sampling volumes or durations specified in Table 2 or 3 to this subpart and according to the testing, monitoring, and calibration requirements specified in § 60.5220(a).

(1) Except as provided in paragraph (e) of this section, you must demonstrate that your SSI unit meets the emission limits and standards specified in Table 2 or 3 to this subpart by your final compliance date (see Table 1 to this subpart).

(2) You may use the results from a performance test conducted within the 2 previous years that demonstrated compliance with the emission limits and standards in Table 2 or 3 to this subpart. However, you must continue to meet the operating limits established during the most recent performance test that demonstrated compliance with the emission limits and standards in Table 2 or 3 to this subpart. The performance test must have used the test methods specified in Table 2 or 3 to this subpart.

(b) Demonstrate initial compliance using a continuous emissions monitoring system, continuous opacity monitoring system, or continuous automated sampling system. Collect data as specified in § 60.5220(b)(6) and use the following procedures:

(1) To demonstrate initial compliance with the emission limits for particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans total mass, dioxins/furans toxic equivalency, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and opacity, you may substitute the use of a continuous monitoring system in lieu of conducting the initial performance test required in paragraph (a) of this section, as follows:

(i) You may substitute the use of a continuous emissions monitoring system for any pollutant specified in paragraph (b)(1) of this section (except opacity) in lieu of conducting the initial performance test for that pollutant in paragraph (a) of this section.

(ii) You may substitute the use of a total hydrocarbon continuous monitoring system in lieu of conducting the initial carbon monoxide performance test required in paragraph (a) of this section.

(iii) If your SSI unit is not equipped with a wet scrubber, you may substitute the use of a continuous opacity monitoring system in lieu of conducting the initial opacity and particulate matter performance tests in paragraph (a) of this section.

(iv) You may substitute the use of a particulate matter continuous emissions monitoring system in lieu of conducting the initial opacity performance test in paragraph (a) of this section.

(v) You may substitute the use of a continuous automated sampling system for mercury or dioxins/furans in lieu of conducting the annual mercury or dioxin/furan performance test in paragraph (a) of this section.

(2) If you use a continuous emissions monitoring system to demonstrate compliance with an applicable emission limit in paragraph (b)(1) of this section, you must use the continuous emissions monitoring system and follow the requirements specified in § 60.5220(b). You must measure emissions according to § 60.13 to calculate 1-hour arithmetic averages, corrected to 7 percent oxygen (or carbon dioxide). You must demonstrate initial compliance using a 24-hour block average of these 1-hour arithmetic average emission concentrations, calculated using Equation 19–19 in section 12.4.1 of Method 19 of 40 CFR part 60, appendix A–7.

(3) If you use a continuous automated sampling system to demonstrate compliance with an applicable emission limit in paragraph (b)(1) of this section, you must:

(i) Use the continuous automated sampling system specified in § 60.58b(p) and (q), and measure and calculate average emissions corrected to 7 percent oxygen (or carbon dioxide) according to § 60.58b(p) and your monitoring plan.

(A) Use the procedures specified in § 60.58b(p) to calculate 24-hour averages to determine compliance with the mercury emission limit in Table 2 to this subpart.

(B) Use the procedures specified in § 60.58b(p) to calculate 2-week averages to determine compliance with the dioxin/furan emission limits in Table 2 to this subpart.

(ii) Comply with the provisions in § 60.58b(q) to develop a monitoring plan. For mercury continuous automated sampling systems, you must use Performance Specification 12B of appendix B of part 75 and Procedure 1 of appendix F of this part.

(4) If you use a continuous opacity monitoring system to demonstrate compliance with an applicable emission or opacity limit in paragraph (b)(1) of this section, you must use the continuous opacity monitoring system and follow the requirements specified in § 60.5220(b). You must measure emissions and calculate 6-minute averages as specified in § 60.13(h)(1). Using these 6-minute averages, you must calculate 1-hour block average opacity values. You must demonstrate initial compliance using the arithmetic average of three 1-hour block averages.

(5) Except as provided in paragraph (e) of this section, you must complete your initial performance evaluations required under your monitoring plan for any continuous emissions monitoring systems, continuous opacity monitoring systems, and continuous automated sampling systems by your final compliance date (see Table 1 to this subpart). Your performance evaluation must be conducted using the procedures and acceptance criteria specified in § 60.5200(a)(3).

(c) To demonstrate initial compliance with the dioxins/furans toxic equivalency emission limit in either paragraph (a) or (b) of this section, you must determine dioxins/furans toxic equivalency as follows:

(1) Measure the concentration of each dioxin/furan tetra-through octachlorinated-congener emitted using EPA Method 23.

(2) For each dioxin/furan (tetra-through octachlorinated) congener measured in accordance with paragraph (c)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 5 to this subpart.

(3) Sum the products calculated in accordance with paragraph (c)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

(d) You must submit an initial compliance report, as specified in § 60.5235(b).

(e) If you demonstrate initial compliance using a performance test as specified in paragraph (a) of this section, then the provisions of this paragraph (e) apply. If a force majeure is about to occur, occurs, or has occurred for which you intend to assert a claim of force majeure, you must notify the Administrator in writing as specified in § 60.5235(g). You must conduct the initial performance test as soon as practicable after the force majeure occurs. The Administrator will determine whether or not to grant the extension to the initial performance test deadline, and will notify you in writing of approval or disapproval of the request for an extension as soon as practicable. Until an extension of the performance test deadline has been approved by the Administrator, you remain strictly subject to the requirements of this subpart.

§ 60.5190 How do I establish my operating limits?

(a) You must establish the site-specific operating limits specified in paragraphs (c) through (l) of this section during the initial performance tests and performance evaluations required in § 60.5185 and the most recent performance tests and performance evaluations required in § 60.5205. Follow the data measurement and recording frequencies and data averaging times specified in Table 4 to this subpart and follow the testing, monitoring, and calibration requirements specified in §§ 60.5220 and 60.5225. You are not required to establish operating limits for the operating parameters listed in Table 4 to this subpart for a control device if you use a continuous monitoring system to demonstrate compliance with the emission limits in Table 2 or 3 to this subpart for the applicable pollutants, as follows:

(1) For a scrubber designed to control emissions of hydrogen chloride and sulfur dioxide, you are not required to establish an operating limit and monitor pressure drop across the scrubber (or amperage to the scrubber), scrubber liquor flow rate, and scrubber pH if you use the continuous monitoring system specified in §§ 60.4865(b) and 60.4885(b) to demonstrate compliance with the emission limit for hydrogen chloride or sulfur dioxide.

(2) For a scrubber designed to control emissions of particulate matter, cadmium, and lead, you are not required to establish an operating limit and monitor pressure drop across the scrubber (or amperage to the scrubber), scrubber liquor flow rate, and scrubber pH if you use the continuous monitoring system specified in §§ 60.4865(b) and 60.4885(b) to demonstrate compliance with the emission limit for particulate matter, cadmium, or lead.

(3) You are not required to establish an operating limit and monitor secondary voltage of the collection plates, secondary amperage of the collection plates, and effluent water flow rate at the outlet of the electrostatic precipitator if you use the continuous monitoring system specified in §§ 60.4865(b) and 60.4885(b) to demonstrate compliance with the emission limit for particulate matter, lead, or cadmium.

(4) You are not required to establish an operating limit and monitor mercury sorbent injection rate and carrier gas flow rate (or carrier gas pressure drop) if you use the continuous monitoring system specified in §§ 60.4865(b) and 60.4885(b) to demonstrate compliance with the emission limit for mercury.

(5) You are not required to establish an operating limit and monitor dioxin/furan sorbent injection rate and carrier gas flow rate (or carrier gas pressure drop) if you use the continuous monitoring system specified in §§ 60.4865(b) and 60.4885(b) to demonstrate compliance with the emission limits for dioxins/furans.

(b) For each operating parameter specified in paragraphs (c) through (k) of this section, determine the average operating parameter level during the initial or most recent performance test or performance evaluation for the applicable pollutant(s) according to the procedures specified in paragraph (b)(1), (2), or (3) of this section, as applicable:

(1) *For continuous monitoring systems that collect multiple data points each hour.* (i) Collect the incremental data for the operating parameter (e.g., scrubber liquor flow rate) for each of the three performance test run periods for each applicable pollutant (e.g., sulfur dioxide and hydrogen chloride). For each applicable performance test run period, calculate the arithmetic average operating parameter level.

(ii) The highest arithmetic average operating parameter level of the applicable performance test run periods specified in paragraph (b)(1)(i) of this section represents the average operating parameter level (e.g., average scrubber liquor flow rate) during the performance test(s) for the applicable pollutant(s). Use this average operating parameter level to establish the respective operating limit, as specified in paragraphs (c) through (k) of this section.

(2) *For continuous monitoring systems that collect data on an hourly basis.* (i) Collect the hourly data for the operating parameter (*e.g.,* mercury sorbent injection rate) for each of the three performance test run periods for each applicable pollutant (*e.g.,* mercury). For each applicable performance test run period, calculate the arithmetic average operating parameter level.

(ii) The highest arithmetic average operating parameter level of the applicable performance test run periods specified in paragraph (b)(2)(i) of this section represents the average operating parameter level (*e.g.,* average mercury sorbent injection rate) during the performance test(s) for the applicable pollutant(s). Use this average operating parameter level to establish the respective operating limit, as specified in paragraphs (c) through (k) of this section.

(3) *For continuous monitoring systems that collect data on a daily basis.* Collect the daily data for the operating parameter (*e.g.,* sludge moisture content) for each day that a performance test is conducted for the applicable pollutant(s). The highest daily arithmetic average operating parameter level for the applicable performance tests represents the average operating parameter level (*e.g.,* average sludge moisture content) during the performance test(s) for the applicable pollutant(s)). Use this average operating parameter level to establish the respective operating limit, as specified in paragraphs (c) through (k) of this section.

(c) Minimum pressure drop across each wet scrubber, calculated as 90 percent of the average pressure drop across each wet scrubber determined

according to paragraph (b)(1) of this section.

(d) Minimum scrubber liquor flow rate (measured at the inlet to the wet scrubber), calculated as 90 percent of the average liquor flow rate determined according to paragraph (b)(1) of this section.

(e) Minimum scrubber liquor pH (measured at the inlet to the wet scrubber), calculated as 90 percent of the average liquor pH determined according to paragraph (b)(1) of this section.

(f) If you do not use an afterburner to comply with the requirements of this rule, minimum combustion chamber temperature, calculated as 90 percent of the average combustion chamber temperature determined according to paragraph (b)(1) of this section.

(g) If you use an afterburner to comply with the requirement of this rule, minimum afterburner combustion chamber temperature, calculated as 90 percent of the average afterburner combustion chamber temperature determined according to paragraph (b)(1) of this section.

(h) Minimum power input to the electrostatic precipitator collection plates, calculated as 90 percent of the average power input. Average power input must be calculated as the product of the average secondary voltage and average secondary amperage to the electrostatic precipitator, both determined according to paragraph (b)(2) of this section.

(i) Maximum effluent water flow rate at the outlet of the electrostatic precipitator, calculated as 70 percent of the average effluent water flow rate at the outlet of the electrostatic precipitator determined according to paragraph (b)(2) of this section.

(j) For activated carbon injection:

(1) Minimum mercury sorbent injection rate, calculated as 90 percent of the average mercury sorbent injection rate, determined according to paragraph (b)(2) of this section.

(2) Minimum dioxin/furan sorbent injection rate, calculated as 90 percent of the average dioxin/furan sorbent injection rate, determined according to paragraph (b)(2) of this section.

(3) Minimum carrier gas flow rate or minimum carrier gas pressure drop, as follows:

(i) Minimum carrier gas flow rate, calculated as 90 percent of the average carrier gas flow rate, determined according to paragraph (b)(1) of this section.

(ii) Minimum carrier gas pressure drop, calculated as 90 percent of the average carrier gas flow rate, determined according to paragraph (b)(1) of this section.

(k) Maximum dry sludge feed rate, calculated as 110 percent of the average dry sludge feed rate, determined according to paragraph (b)(2) of this section.

(l) Sludge moisture content, measured on a daily basis as a percentage, must be no less than 10 percent less than and no more than 10 percent greater than the average sludge moisture content determined according to paragraph (b)(3) of this section. For example, if your average sludge moisture content is measured as 20 percent, your sludge moisture level must be greater than or equal to 18 percent and less than or equal to 22 percent.

§ 60.5195 By what date must I conduct the initial air pollution control device inspection and make any necessary repairs?

(a) You must conduct an air pollution control device inspection according to § 60.5220(c) by the final compliance date under the approved State plan, Federal plan, or delegation, as applicable. For air pollution control devices installed after the final compliance date, you must conduct the air pollution control device inspection within 60 days after installation of the control device.

(b) Within 10 operating days following the air pollution control device inspection under paragraph (a) of this section, all necessary repairs must be completed unless you obtain written approval from the Administrator establishing a date whereby all necessary repairs of the SSI unit must be completed.

§ 60.5200 How do I develop a site-specific monitoring plan for my continuous monitoring systems and bag leak detection system and by what date must I conduct an initial performance evaluation of my continuous monitoring systems and bag leak detection system?

You must develop and submit to the Administrator for approval a site-specific monitoring plan for each continuous monitoring system required under this subpart, according to the requirements in paragraphs (a) through (c) of this section. This requirement also applies to you if you petition the Administrator for alternative monitoring parameters under § 60.13(i) and paragraph (d) of this section. If you use a continuous automated sampling system to comply with the mercury or dioxin/furan emission limits, you must develop your monitoring plan as specified in § 60.58b(q), and you are not required to meet the requirements in paragraphs (a) and (b) of this section. You must submit your monitoring plan at least 60 days before your initial performance evaluation of your continuous monitoring system(s), as specified in paragraph (c) of this section. You must update your monitoring plan as specified in paragraph (e) of this section.

(a) For each continuous monitoring system, your monitoring plan must address the elements and requirements specified in paragraphs (a)(1) through (8) of this section.

(1) Installation of the continuous monitoring system sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.,* on or downstream of the last control device).

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer and the data collection and reduction systems.

(3) Performance evaluation procedures and acceptance criteria.

(i) For continuous emissions monitoring systems, your performance evaluation and acceptance criteria will include, but not be limited to, the following:

(A) The applicable requirements for continuous emissions monitoring systems specified in § 60.13.

(B) The applicable performance specifications (*e.g.,* relative accuracy tests) in appendix B of this part.

(C) The applicable procedures (*e.g.,* quarterly accuracy determinations and daily calibration drift tests) in appendix F of this part.

(ii) For continuous opacity monitoring systems, your performance evaluation and acceptance criteria will include, but not be limited to, the following:

(A) The applicable requirements for continuous emissions monitoring systems specified in § 60.13.

(B) Performance Specification 1 in appendix B of this part.

(iii) For continuous parameter monitoring systems, your performance evaluation and acceptance criteria must include, but not be limited to, the associated performance specifications and quality assurance procedures.

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of § 60.11(d).

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 60.13.

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 60.7(b), (c), (c)(1), (c)(4), (d), (e), (f), and (g).

(7) Provisions for periods when the continuous monitoring system is out of control, as follows:

(i) A continuous emissions monitoring system is out of control if the conditions in any one of paragraphs (a)(7)(i)(A), (B), or (C) of this section are met.

(A) The zero (low-level), mid-level (if applicable), or high-level calibration drift exceeds two times the applicable calibration drift specification in the applicable performance specification or in the relevant standard.

(B) The continuous emissions monitoring system fails a performance test audit (*e.g.,* cylinder gas audit), relative accuracy audit, relative accuracy test audit, or linearity test audit.

(C) The continuous opacity monitoring system calibration drift exceeds two times the limit in the applicable performance specification in the relevant standard.

(ii) When the continuous emissions monitoring system is out of control as specified in paragraph (a)(7)(i) of this section, you must take the necessary corrective action and must repeat all necessary tests that indicate that the system is out of control. You must take corrective action and conduct retesting until the performance requirements are below the applicable limits. The beginning of the out-of-control period is the hour you conduct a performance check (*e.g.,* calibration drift) that indicates an exceedance of the performance requirements established under this part. The end of the out-of-control period is the hour following the completion of corrective action and successful demonstration that the system is within the allowable limits.

(8) Schedule for conducting initial and periodic performance evaluations of your continuous monitoring systems in accordance with your site-specific monitoring plan.

(b) If a bag leak detection system is used, your monitoring plan must include a description of the following items:

(1) Installation of the bag leak detection system.

(2) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established.

(3) Operation of the bag leak detection system, including quality assurance procedures.

(4) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list.

(5) How the bag leak detection system output will be recorded and stored.

(c) You must conduct an initial performance evaluation of each continuous monitoring system and bag leak detection system, as applicable, in accordance with your monitoring plan and within 60 days of installation of the continuous monitoring system and bag leak detection system, as applicable.

(d) You may submit an application to the Administrator for approval of alternate monitoring requirements to demonstrate compliance with the standards of this subpart, subject to the provisions of paragraphs (d)(1) through (6) of this section.

(1) The Administrator will not approve averaging periods other than those specified in this section, unless you document, using data or information, that the longer averaging period will ensure that emissions do not exceed levels achieved during the performance test over any increment of time equivalent to the time required to conduct three runs of the performance test.

(2) If the application to use an alternate monitoring requirement is approved, you must continue to use the original monitoring requirement until approval is received to use another monitoring requirement.

(3) You must submit the application for approval of alternate monitoring requirements no later than the notification of performance test. The application must contain the information specified in paragraphs (d)(3)(i) through (iii) of this section:

(i) Data or information justifying the request, such as the technical or economic infeasibility, or the impracticality of using the required approach.

(ii) A description of the proposed alternative monitoring requirement, including the operating parameter to be monitored, the monitoring approach and technique, the averaging period for the limit, and how the limit is to be calculated.

(iii) Data or information documenting that the alternative monitoring requirement would provide equivalent or better assurance of compliance with the relevant emission standard.

(4) The Administrator will notify you of the approval or denial of the application within 90 calendar days after receipt of the original request, or within 60 calendar days of the receipt of any supplementary information, whichever is later. The Administrator will not approve an alternate monitoring application unless it would provide equivalent or better assurance of compliance with the relevant emission standard. Before disapproving any alternate monitoring application, the Administrator will provide the following:

(i) Notice of the information and findings upon which the intended disapproval is based.

(ii) Notice of opportunity for you to present additional supporting information before final action is taken on the application. This notice will specify how much additional time is allowed for you to provide additional supporting information.

(5) You are responsible for submitting any supporting information in a timely manner to enable the Administrator to consider the application prior to the performance test. Neither submittal of an application, nor the Administrator's failure to approve or disapprove the application relieves you of the responsibility to comply with any provision of this subpart.

(6) The Administrator may decide at any time, on a case-by-case basis that additional or alternative operating limits, or alternative approaches to establishing operating limits, are necessary to demonstrate compliance with the emission standards of this subpart.

(e) You must update your monitoring plan if there are any changes in your monitoring procedures or if there is a process change, as defined in § 60.5250.

Model Rule—Continuous Compliance Requirements

§ 60.5205 How and when do I demonstrate continuous compliance with the emission limits and standards?

To demonstrate continuous compliance with the emission limits and standards specified in Table 2 or 3 to this subpart, use the procedures specified in paragraph (a) of this section. In lieu of using the procedures specified in paragraph (a) of this section, you have the option to demonstrate initial compliance using the procedures specified in paragraph (b) of this section for particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and opacity. You must meet the requirements of paragraphs (a) and (b) of this section, as applicable, and paragraphs (c) through (e) of this section, according to the performance testing, monitoring, and calibration requirements in § 60.5220(a) and (b).

(a) Demonstrate continuous compliance using a performance test. Within 10 to 12 months following the initial performance test (except as provided in paragraph (e) of this section), demonstrate continuous compliance with the emission limits and standards specified in Table 2 or 3

to this subpart for particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and opacity using a performance test. The performance test must be conducted using the test methods, averaging methods, and minimum sampling volumes or durations specified in Table 2 or 3 to this subpart and according to the testing, monitoring, and calibration requirements specified in § 60.5220(a). Conduct subsequent annual performance tests within 10 to 12 months following the previous one.

(1) You may conduct a repeat performance test at any time to establish new values for the operating limits to apply from that point forward. The Administrator may request a repeat performance test at any time.

(2) You must repeat the performance test within 60 days of a process change, as defined in § 60.5250.

(3) You have the option to perform less frequent testing to demonstrate compliance with the particulate matter, hydrogen chloride, mercury, nitrogen oxides, sulfur dioxide, cadmium, and lead emission limits.

(i) To perform less frequent testing, you must meet the following requirements:

(A) You have test data for at least 3 consecutive years.

(B) The test data results for particulate matter, hydrogen chloride, mercury, nitrogen oxides, sulfur dioxide, cadmium, or lead are less than 75 percent of the applicable emission limits.

(C) There are no changes in the operation of the SSI unit or air pollution control equipment that could increase emissions. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the third year and no more than 36 months following the previous performance test.

(ii) If your SSI unit continues to emit less than 75 percent of the emission limit for particulate matter, hydrogen chloride, mercury, nitrogen oxides, sulfur dioxide, cadmium, or lead and there are no changes in the operation of the SSI unit or air pollution control equipment that could increase emissions, you may choose to conduct performance tests for these pollutants every third year, but each test must be within 36 months of the previous performance test.

(iii) If a performance test shows emissions exceeded 75 percent or greater of the emission limit for particulate matter, hydrogen chloride, mercury, nitrogen oxides, sulfur dioxide, cadmium, or lead, you must conduct annual performance tests for that pollutant until all performance tests over the next 3-year period are within 75 percent of the applicable emission limit.

(b) Demonstrate continuous compliance using a continuous emissions monitoring system, continuous opacity monitoring system, or continuous automated sampling system. Collect data as specified in § 60.5220(b)(6) and use the following procedures:

(1) To demonstrate continuous compliance with the emission limits for particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans total mass, dioxins/furans toxic equivalency, mercury, nitrogen oxides, sulfur dioxide, cadmium, lead, and opacity, you may substitute the use of a continuous monitoring system in lieu of conducting the annual performance test required in paragraph (a) of this section, as follows:

(i) You may substitute the use of a continuous emissions monitoring system for any pollutant (except opacity) specified in paragraph (b)(1) of this section in lieu of conducting the annual performance test for that pollutant in paragraph (a) of this section.

(ii) You may substitute the use of a total hydrocarbon continuous monitoring system in lieu of conducting the carbon monoxide annual performance test required in paragraph (a) of this section.

(iii) If your SSI unit is not equipped with a wet scrubber, you may substitute the use of a continuous opacity monitoring system in lieu of conducting the annual opacity and particulate matter performance tests in paragraph (a) of this section.

(iv) You may substitute the use of a particulate matter continuous emissions monitoring system in lieu of conducting the annual opacity performance test in paragraph (a) of this section.

(v) You may substitute the use of a continuous automated sampling system for mercury or dioxins/furans in lieu of conducting the annual mercury or dioxin/furan performance test in paragraph (a) of this section.

(2) If you use a continuous emissions monitoring system to demonstrate compliance with an applicable emission limit in paragraph (b)(1) of this section, you must use the continuous emissions monitoring system and follow the requirements specified in § 60.5220(b). You must measure emissions according to § 60.13 to calculate 1-hour arithmetic averages, corrected to 7 percent oxygen (or carbon dioxide). You must demonstrate initial compliance using a 24-hour block average of these 1-hour arithmetic average emission concentrations, calculated using Equation 19–19 in section 12.4.1 of Method 19 of 40 CFR part 60, appendix A–7.

(3) If you use a continuous automated sampling system to demonstrate compliance with an applicable emission limit in paragraph (b)(1) of this section, you must:

(i) Use the continuous automated sampling system specified in § 60.58b(p) and (q), and measure and calculate average emissions corrected to 7 percent oxygen (or carbon dioxide) according to § 60.58b(p) and your monitoring plan.

(A) Use the procedures specified in § 60.58b(p) to calculate 24-hour averages to determine compliance with the mercury emission limit in Table 2 to this subpart.

(B) Use the procedures specified in § 60.58b(p) to calculate 2-week averages to determine compliance with the dioxin/furan emission limits in Table 2 to this subpart.

(ii) Update your monitoring plan as specified in § 60.4880(e). For mercury continuous automated sampling systems, you must use Performance Specification 12B of appendix B of part 75 and Procedure 1 of appendix F of this part.

(4) If you use a continuous opacity monitoring system to demonstrate compliance with an applicable emission or opacity limit in paragraph (b)(1) of this section, you must use the continuous opacity monitoring system and follow the requirements specified in § 60.5220(b). You must measure emissions and calculate 6-minute averages as specified in § 60.13(h)(1). Using these 6-minute averages, you must calculate 1-hour block average opacity values. You must demonstrate initial compliance using the arithmetic average of three 1-hour block averages.

(5) Except as provided in paragraph (e) of this section, you must complete your periodic performance evaluations required in your monitoring plan for any continuous emissions monitoring systems, continuous opacity monitoring systems, and continuous automated sampling systems, according to the schedule specified in your monitoring plan. If you were previously determining compliance by conducting an annual performance test, you must complete the initial performance evaluation required under your monitoring plan in § 60.5200 for the continuous monitoring system within 60 days of notification to the Administrator of use of the continuous emissions monitoring system, continuous opacity monitoring, or

continuous automated sampling system. Your performance evaluation must be conducted using the procedures and acceptance criteria specified in § 60.5200(a)(3).

(c) To demonstrate compliance with the dioxins/furans toxic equivalency emission limit in paragraph (a) or (b) of this section, you must determine dioxins/furans toxic equivalency as follows:

(1) Measure the concentration of each dioxin/furan tetra-through octachlorinated-congener emitted using Method 23 at 40 CFR part 60, appendix A–7.

(2) For each dioxin/furan (tetra-through octachlorinated) congener measured in accordance with paragraph (c)(1) of this section, multiply the congener concentration by its corresponding toxic equivalency factor specified in Table 3 to this subpart.

(3) Sum the products calculated in accordance with paragraph (c)(2) of this section to obtain the total concentration of dioxins/furans emitted in terms of toxic equivalency.

(d) You must submit an annual compliance report as specified in § 60.5235(c). You must submit a deviation report as specified in § 60.5235(d) for each instance that you did not meet each emission limit in Table 2 to this subpart.

(e) If you demonstrate continuous compliance using a performance test, as specified in paragraph (a) of this section, then the provisions of this paragraph (e) apply. If a force majeure is about to occur, occurs, or has occurred for which you intend to assert a claim of force majeure, you must notify the Administrator in writing as specified in § 60.5235(g). You must conduct the performance test as soon as practicable after the force majeure occurs. The Administrator will determine whether or not to grant the extension to the performance test deadline, and will notify you in writing of approval or disapproval of the request for an extension as soon as practicable. Until an extension of the performance test deadline has been approved by the Administrator, you remain strictly subject to the requirements of this subpart.

§ 60.5210 How do I demonstrate continuous compliance with my operating limits?

You must meet the requirements of paragraphs (a) through (c) of this section, according to the monitoring and calibration requirements in § 60.5225.

(a) You must continuously monitor the operating parameters specified in paragraphs (a)(1) and (a)(2) of this section using the continuous monitoring equipment and according to the procedures specified in § 60.5225, except as provided in § 60.5175. Four-hour rolling average values are used to determine compliance (except for sludge moisture content and alarm time of the baghouse leak detection system) unless a different averaging period is established under § 60.5175 for an air pollution control device other than a wet scrubber, fabric filter, electrostatic precipitator, activated carbon injection, or afterburner. A daily average must be used to determine compliance for sludge moisture content.

(1) You must demonstrate that the SSI unit meets the operating limits established according to §§ 60.5175 and 60.5190 for each applicable operating parameter.

(2) You must demonstrate that the SSI unit meets the operating limit for bag leak detection systems as follows:

(i) For a bag leak detection system, you must calculate the alarm time as follows:

(A) If inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted.

(B) If corrective action is required, each alarm time shall be counted as a minimum of 1 hour.

(C) If you take longer than 1 hour to initiate corrective action, each alarm time (*i.e.,* time that the alarm sounds) is counted as the actual amount of time taken by you to initiate corrective action.

(ii) Your maximum alarm time is equal to 5 percent of the operating time during a 6-month period, as specified in § 60.5170(c).

(b) Operation above the established maximum, below the established minimum, or outside the allowable range of the operating limits specified in paragraph (a) of this section constitutes a deviation from your operating limits established under this subpart, except during performance tests conducted to determine compliance with the emission and operating limits or to establish new operating limits. You must submit the deviation report specified in § 60.5235(d) for each instance that you did not meet one of your operating limits established under this subpart.

(c) You must submit the annual compliance report specified in § 60.5235(c) to demonstrate continuous compliance.

§ 60.5215 By what date must I conduct annual air pollution control device inspections and make any necessary repairs?

(a) You must conduct an annual inspection of each air pollution control device used to comply with the emission limits, according to § 60.5220(c), within 10 to 12 months following the previous annual air pollution control device inspection.

(b) Within 10 operating days following an air pollution control device inspection, all necessary repairs must be completed unless you obtain written approval from the Administrator establishing a date whereby all necessary repairs of the affected SSI unit must be completed.

Model Rule—Performance Testing, Monitoring, and Calibration Requirements

§ 60.5220 What are the performance testing, monitoring, and calibration requirements for compliance with the emission limits and standards?

You must meet, as applicable, the performance testing requirements specified in paragraph (a) of this section, the monitoring requirements specified in paragraph (b) of this section, the air pollution control device inspections requirements specified in paragraph (c) of this section, and the bypass stack provisions specified in paragraph (d) of this section.

(a) *Performance testing requirements.* (1) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations, as specified in § 60.8(c). Emissions in excess of the emission limits or standards during periods of startup, shutdown, and malfunction are considered deviations from the applicable emission limits or standards.

(2) You must document that the dry sludge burned during the performance test is representative of the sludge burned under normal operating conditions by:

(i) Maintaining a log of the quantity of sewage sludge burned during the performance test.

(ii) Maintaining a log of the moisture content of the sewage sludge burned during the performance test.

(3) All performance tests must be conducted using the test methods, minimum sampling volume, observation period, and averaging method specified in Table 2 or 3 to this subpart.

(4) Method 1 at 40 CFR part 60, appendix A must be used to select the sampling location and number of traverse points.

(5) Method 3A or 3B at 40 CFR part 60, appendix A–2 must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B at 40 CFR part 60, appendix A–2 must be used simultaneously with each method.

(6) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 of this section:

$$C_{adj} = C_{meas}(20.9 - 7)/(20.9 - \%O_2) \quad \text{(Eq. 1)}$$

Where:

C_{adj} = Pollutant concentration adjusted to 7 percent oxygen.

C_{meas} = Pollutant concentration measured on a dry basis.

$(20.9 - 7)$ = 20.9 percent oxygen $-$ 7 percent oxygen (defined oxygen correction basis).

20.9 = Oxygen concentration in air, percent.

$\%O_2$ = Oxygen concentration measured on a dry basis, percent.

(7) Performance tests must be conducted and data reduced in accordance with the test methods and procedures contained in this subpart unless the Administrator does one of the following.

(i) Specifies or approves, in specific cases, the use of a method with minor changes in methodology.

(ii) Approves the use of an equivalent method.

(iii) Approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance.

(iv) Waives the requirement for performance tests because you have demonstrated by other means to the Administrator's satisfaction that the affected SSI unit is in compliance with the standard.

(v) Approves shorter sampling times and smaller sample volumes when necessitated by process variables or other factors. Nothing in this paragraph is construed to abrogate the Administrator's authority to require testing under section 114 of the Clean Air Act.

(8) You must provide the Administrator at least 30 days prior notice of any performance test, except as specified under other subparts, to afford the Administrator the opportunity to have an observer present. If after 30 days notice for an initially scheduled performance test, there is a delay (due to operational problems, etc.) in conducting the scheduled performance test, you must notify the Administrator as soon as possible of any delay in the original test date, either by providing at least 7 days prior notice of the rescheduled date of the performance test, or by arranging a rescheduled date with the Administrator by mutual agreement.

(9) You must provide, or cause to be provided, performance testing facilities as follows:

(i) Sampling ports adequate for the test methods applicable to the SSI unit, as follows:

(A) Constructing the air pollution control system such that volumetric flow rates and pollutant emission rates can be accurately determined by applicable test methods and procedures.

(B) Providing a stack or duct free of cyclonic flow during performance tests, as demonstrated by applicable test methods and procedures.

(ii) Safe sampling platform(s).

(iii) Safe access to sampling platform(s).

(iv) Utilities for sampling and testing equipment.

(10) Unless otherwise specified in this subpart, each performance test must consist of three separate runs using the applicable test method. Each run must be conducted for the time and under the conditions specified in the applicable standard. Compliance with each emission limit must be determined by calculating the arithmetic mean of the three runs. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond your control, compliance may, upon the Administrator's approval, be determined using the arithmetic mean of the results of the two other runs.

(b) *Continuous monitor requirements.* You must meet the following requirements, as applicable, when using a continuous monitoring system to demonstrate compliance with the emission limits in Table 2 or 3 to this subpart. The option to use a continuous emissions monitoring system for hydrogen chloride, dioxins/furans, cadmium, or lead takes effect on the date a final performance specification applicable to hydrogen chloride, dioxins/furans, cadmium, or lead is published in the **Federal Register**. If you elect to use a continuous emissions monitoring system or continuous opacity monitoring system instead of conducting annual performance testing, you must meet the requirements of paragraphs (b)(1) through (6) of this section. If you elect to use a continuous automated sampling system instead of conducting annual performance testing, you must meet the requirements of paragraph (b)(7) of this section. The option to use a continuous automated sampling system for mercury or dioxins/furans takes effect on the date a final performance specification for such a continuous automated sampling system is published in the **Federal Register**.

(1) You must notify the Administrator 1 month before starting use of the continuous emissions monitoring system or continuous opacity monitoring system.

(2) You must notify the Administrator 1 month before stopping use of the continuous emissions monitoring system or continuous opacity monitoring system, in which case you must also conduct a performance test within 60 days of ceasing operation of the system.

(3) You must install, operate, calibrate, and maintain an instrument for continuously measuring and recording the emissions to the atmosphere or opacity in accordance with the following:

(i) Section 60.13 of subpart A of this part.

(ii) The following performance specifications of appendix B of this part, as applicable:

(A) For particulate matter, Performance Specification 11 of appendix B of this part.

(B) For hydrogen chloride, Performance Specification 15 of appendix B of this part.

(C) For carbon monoxide, Performance Specification 4B of appendix B of this part.

(D) [Reserved]

(E) For mercury, Performance Specification 12A of appendix B of this part.

(F) For nitrogen oxides, Performance Specification 2 of appendix B of this part.

(G) For sulfur dioxide, Performance Specification 2 of appendix B of this part.

(H) [Reserved]

(I) [Reserved]

(J) For opacity, Performance Specification 1 of appendix B of this part.

(iii) For continuous emissions monitoring systems, the quality assurance procedures (*e.g.,* quarterly accuracy determinations and daily calibration drift tests) of appendix F of this part specified in paragraphs (b)(3)(iii)(A) through (I) of this section. For each pollutant, the span value of the continuous emissions monitoring system is two times the applicable emission limit, expressed as a concentration.

(A) For particulate matter, Procedure 2 in appendix F of this part.

(B) For hydrogen chloride, Procedure 1 in appendix F of this part except that the Relative Accuracy Test Audit requirements of Procedure 1 shall be replaced with the validation requirements and criteria of sections 11.1.1 and 12.0 of Performance

Specification 15 of appendix B of this part.

(C) For carbon monoxide, Procedure 1 in appendix F of this part.

(D) [Reserved]

(E) For mercury, procedures 1 and 5 in appendix F of this part.

(F) For nitrogen oxides, Procedure 1 in appendix F of this part.

(G) For sulfur dioxide, Procedure 1 in appendix F of this part.

(H) [Reserved]

(I) [Reserved]

(4) During each relative accuracy test run of the continuous emissions monitoring system using the performance specifications in paragraph (b)(3)(ii) of this section, emission data for each regulated pollutant and oxygen (or carbon dioxide as established in (b)(5) of this section) must be collected concurrently (or within a 30- to 60-minute period) by both the continuous emissions monitors and the test methods specified in paragraphs (b)(4)(i) through (b)(4)(viii) of this section. Relative accuracy testing must be at normal operating conditions while the SSI unit is charging sewage sludge.

(i) For particulate matter, Method 5 at 40 CFR part 60, appendix A–3 or Method 26A or 29 at 40 CFR part 60, appendix A–8 shall be used.

(ii) For hydrogen chloride, Method 26 or 26A at 40 CFR part 60, appendix A–8, shall be used.

(iii) For carbon monoxide, Method 10, 10A, or 10B at 40 CFR part 60, appendix A–4, shall be used.

(iv) For dioxins/furans, Method 23 at 40 CFR part 60, appendix A–7, shall be used.

(v) For mercury, cadmium, and lead, Method 29 at 40 CFR part 60, appendix A–8, or as an alternative ASTM D6784–02, shall be used.

(vi) For nitrogen oxides, Method 7 or 7E at 40 CFR part 60, appendix A–4, shall be used.

(vii) For sulfur dioxide, Method 6 or 6C at 40 CFR part 60, appendix A–4, or as an alternative American National Standards Institute/American Society of Mechanical Engineers PTC–19.10–1981 Flue and Exhaust Gas Analysis [Part 10, Instruments and Apparatus] must be used. For sources that have actual inlet emissions less than 100 parts per million dry volume, the relative accuracy criterion for the inlet of the sulfur dioxide continuous emissions monitoring system should be no greater than 20 percent of the mean value of the method test data in terms of the units of the emission standard, or 5 parts per million dry volume absolute value of the mean difference between the method and the continuous emissions monitoring system, whichever is greater.

(viii) For oxygen (or carbon dioxide as established in (a)(2)(v) of this section), Method 3A or 3B at 40 CFR part 60, appendix A–2, or as an alternative American National Standards Institute/American Society of Mechanical Engineers PTC–19.10–1981—Flue and Exhaust Gas Analysis [Part 10, Instruments and Apparatus], as applicable, must be used.

(5) You may request that compliance with the emission limits (except opacity) be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen. If carbon dioxide is selected for use in diluent corrections, the relationship between oxygen and carbon dioxide levels must be established during the initial performance test according to the procedures and methods specified in paragraphs (b)(5)(i) through (b)(5)(iv) of this section. This relationship may be re-established during subsequent performance compliance tests.

(i) The fuel factor equation in Method 3B at 40 CFR part 60, appendix A–2 must be used to determine the relationship between oxygen and carbon dioxide at a sampling location. Method 3A or 3B at 50 CFR part 60, appendix A–2, or as an alternative American National Standards Institute/American Society of Mechanical Engineers PTC–19.–10–1981— Flue and Exhaust Gas Analysis [Part 10, Instruments and Apparatus], as applicable, must be used to determine the oxygen concentration at the same location as the carbon dioxide monitor.

(ii) Samples must be taken for at least 30 minutes in each hour.

(iii) Each sample must represent a 1-hour average.

(iv) A minimum of three runs must be performed.

(6) You must collect data with the continuous monitoring system as follows:

(i) You must collect data using the continuous monitoring system at all times the affected SSI unit is operating and at the intervals specified in paragraph (b)(6)(ii) of this section, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(ii) You must collect continuous opacity monitoring system data in accordance with § 60.13(e)(1), and you must collect continuous emissions monitoring system data in accordance with § 60.13(e)(2).

(iii) Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities must not be included in calculations used to report emissions or operating levels. Any such periods must be reported in a deviation report.

(iv) Any data collected during periods when the monitoring system is out of control as specified in § 60.4880(a)(7)(i) must not be included in calculations used to report emissions or operating levels. Any such periods that do not coincide with a monitoring system malfunction as defined in § 60.5250, constitute a deviation from the monitoring requirements and must be reported in a deviation report.

(v) You must use all the data collected during all periods except those periods specified in paragraphs (b)(6)(iii) and (b)(6)(iv) of this section in assessing the operation of the control device and associated control system.

(7) If you elect to use a continuous automated sampling system instead of conducting annual performance testing, you must:

(i) Install, calibrate, maintain, and operate a continuous automated sampling system according to the site-specific monitoring plan developed in § 60.58b(p)(1) through (p)(6), (p)(9), (p)(10), and (q).

(ii) Collect data according to § 60.58b(p)(5) and paragraph (b)(6) of this section.

(c) *Air pollution control device inspections.* You must conduct air pollution control device inspections that include, at a minimum, the following:

(1) Inspect air pollution control device(s) for proper operation, if applicable.

(2) Ensure proper calibration of thermocouples, sorbent feed systems, and any other monitoring equipment.

(3) Generally observe that the equipment is maintained in good operating condition.

(4) Ensure that the air pollution control device meets manufacturer recommendations.

(d) *Bypass stack.* Use of the bypass stack at any time that sewage sludge is being charged to the SSI unit is an emissions standards deviation for all pollutants listed in Table 2 or 3 to this subpart. The use of the bypass stack during a performance test invalidates the performance test.

§ 60.5225 What are the monitoring and calibration requirements for compliance with my operating limits?

(a) You must install, operate, calibrate, and maintain the continuous

parameter monitoring systems for measuring flow, pressure, pH, and temperature according to the requirements in paragraphs (a)(1) and (a)(2) of this section:

(1) Meet the following general requirements for flow, pressure, pH, and temperature measurement devices:

(i) You must collect data using the continuous monitoring system at all times the affected SSI unit is operating and at the intervals specified in paragraph (a)(1)(ii) of this section, except for periods of monitoring system malfunctions, repairs associated with monitoring system malfunctions, and required monitoring system quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments).

(ii) You must collect continuous parameter monitoring system data in accordance with § 60.13(e)(2).

(iii) Any data collected during monitoring system malfunctions, repairs associated with monitoring system malfunctions, or required monitoring system quality assurance or control activities must not be included in calculations used to report emissions or operating levels. Any such periods must be reported in your annual deviation report.

(iv) Any data collected during periods when the monitoring system is out of control as specified in § 60.5200(a)(7)(i) must not be included in calculations used to report emissions or operating levels. Any such periods that do not coincide with a monitoring system malfunction, as defined in § 60.5250, constitute a deviation from the monitoring requirements and must be reported in a deviation report.

(v) You must use all the data collected during all periods except those periods specified in paragraphs (a)(1)(iii) and (a)(1)(iv) of this section in assessing the operation of the control device and associated control system.

(vi) Determine the 4-hour rolling average of all recorded readings, except as provided in paragraph (a)(1)(iii) of this section.

(vii) Record the results of each inspection, calibration, and validation check.

(2) Meet the following requirements for each type of measurement device:

(i) If you have an operating limit that requires the use of a flow measurement device, you must meet the following requirements:

(A) Locate the flow sensor and other necessary equipment in a position that provides a representative flow.

(B) Use a flow sensor with a measurement sensitivity of 2 percent of the flow rate.

(C) Reduce swirling flow or abnormal velocity distributions due to upstream and downstream disturbances.

(D) Conduct a flow sensor calibration check at least semi-annually.

(E) For carrier gas flow rate monitors (for activated carbon injection), during the performance test conducted pursuant to § 60.5205, you must demonstrate that the system is maintained within +/− 5 percent accuracy, according to the procedures in appendix A to part 75 of this chapter.

(ii) If you have an operating limit that requires the use of a pressure measurement device, you must meet the following requirements:

(A) Locate the pressure sensor(s) in a position that provides a representative measurement of the pressure.

(B) Minimize or eliminate pulsating pressure, vibration, and internal and external corrosion.

(C) Use a gauge with a minimum tolerance of 1.27 centimeters of water or a transducer with a minimum tolerance of 1 percent of the pressure range.

(D) Check pressure tap pluggage daily.

(E) Using a manometer, check gauge calibration quarterly and transducer calibration monthly.

(F) Conduct calibration checks any time the sensor exceeds the manufacturer's specified maximum operating pressure range or install a new pressure sensor.

(G) For carrier gas pressure drop monitors (for activated carbon injection), during the performance test conducted pursuant to § 60.5205, you must demonstrate that the system is maintained within +/− 5 percent accuracy.

(iii) If you have an operating limit that requires the use of a pH measurement device, you must meet the following requirements:

(A) Locate the pH sensor in a position that provides a representative measurement of scrubber effluent pH.

(B) Ensure the sample is properly mixed and representative of the fluid to be measured.

(C) Check the pH meter's calibration on at least two points every 8 hours of process operation.

(iv) If you have an operating limit that requires the use of a temperature measurement device, you must meet the following requirements:

(A) Locate the temperature sensor and other necessary equipment in a position that provides a representative temperature.

(B) Use a temperature sensor with a minimum tolerance of 2.3 degrees Celsius (5 degrees Fahrenheit), or 1.0 percent of the temperature value, whichever is larger, for a noncryogenic temperature range.

(C) Use a temperature sensor with a minimum tolerance of 2.3 degrees Celsius (5 degrees Fahrenheit), or 2.5 percent of the temperature value, whichever is larger, for a cryogenic temperature range.

(D) Conduct a temperature measurement device calibration check at least every 3 months.

(b) You must install, operate, calibrate, and maintain the continuous parameter monitoring systems for voltage, amperage, mass flow rate, and bag leak detection system as specified in paragraphs (b)(1) through (b)(3) of this section.

(1) If you have an operating limit that requires the use of equipment to monitor secondary voltage and secondary amperage (or power input) of an electrostatic precipitator, you must use secondary voltage and secondary amperage monitoring equipment to measure secondary voltage and secondary amperage to the electrostatic precipitator.

(2) If you have an operating limit that requires the use of equipment to monitor mass flow rate for sorbent injection (e.g., weigh belt, weigh hopper, or hopper flow measurement device), you must meet the following requirements:

(i) Locate the device in a position(s) that provides a representative measurement of the total sorbent injection rate.

(ii) Install and calibrate the device in accordance with manufacturer's procedures and specifications.

(iii) At least annually, calibrate the device in accordance with the manufacturer's procedures and specifications.

(3) If you use a fabric filter to comply with the requirements of this subpart, you must:

(i) Install, operate, calibrate, and maintain your bag leak detection system as follows:

(A) You must install and operate a bag leak detection system for each exhaust stack of the fabric filter.

(B) Each bag leak detection system must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations and in accordance with the guidance provided in EPA–454/R–98–015, September 1997.

(C) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter emissions at concentrations of

10 milligrams per actual cubic meter or less.

(D) The bag leak detection system sensor must provide output of relative or absolute particulate matter loadings.

(E) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(F) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative particulate matter emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(G) For positive pressure fabric filter systems that do not duct all compartments of cells to a common stack, a bag leak detection system must be installed in each baghouse compartment or cell.

(H) Where multiple bag leak detectors are required, the system's instrumentation and alarm may be shared among detectors.

(I) You must operate and maintain your bag leak detection system in continuous operation according to your monitoring plan required under § 60.5200.

(ii) You must initiate procedures to determine the cause of every alarm within 8 hours of the alarm, and you must alleviate the cause of the alarm within 24 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(A) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in particulate matter emissions.

(B) Sealing off defective bags or filter media.

(C) Replacing defective bags or filter media or otherwise repairing the control device.

(D) Sealing off a defective fabric filter compartment.

(E) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system.

(F) Shutting down the process producing the particulate matter emissions.

(c) You must operate and maintain the continuous parameter monitoring systems specified in paragraphs (a) and (b) of this section in continuous operation according to your monitoring plan required under § 60.5200.

(d) If your SSI unit has a bypass stack, you must install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of the bypass stack including date, time, and duration.

Model Rule—Recordkeeping and Reporting

§ 60.5230 What records must I keep?

You must maintain the items (as applicable) specified in paragraphs (a) through (m) of this section for a period of at least 5 years. All records must be available on site in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

(a) *Date.* Calendar date of each record.

(b) *Increments of progress.* Copies of the final control plan and any additional notifications, reported under § 60.5250.

(c) *Operator Training.* Documentation of the operator training procedures and records specified in paragraphs (c)(1) through (c)(4) of this section. You must make available and readily accessible at the facility at all times for all SSI unit operators the documentation specified in paragraph (c)(1) of this section.

(1) Documentation of the following operator training procedures and information:

(i) Summary of the applicable standards under this subpart.

(ii) Procedures for receiving, handling, and feeding sewage sludge.

(iii) Incinerator startup, shutdown, and malfunction procedures.

(iv) Procedures for maintaining proper combustion air supply levels.

(v) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(vi) Monitoring procedures for demonstrating compliance with the incinerator operating limits.

(vii) Reporting and recordkeeping procedures.

(viii) Procedures for handling ash.

(ix) A list of the materials burned during the performance test, if in addition to sewage sludge.

(x) For each qualified operator and other plant personnel who may operate the unit according to the provisions of § 60.5155(a), the phone and/or pager number at which they can be reached during operating hours.

(2) Records showing the names of SSI unit operators and other plant personnel who may operate the unit according to the provisions of § 60.5155(a), as follows:

(i) Records showing the names of SSI unit operators and other plant personnel who have completed review of the information in paragraph (c)(1) of this section as required by § 60.5160(b), including the date of the initial review and all subsequent annual reviews.

(ii) Records showing the names of the SSI operators who have completed the operator training requirements under § 60.5130, met the criteria for qualification under § 60.5140, and maintained or renewed their qualification under § 60.5145 or § 60.5150. Records must include documentation of training, including the dates of their initial qualification and all subsequent renewals of such qualifications.

(3) Records showing the periods when no qualified operators were accessible for more than 8 hours, but less than 2 weeks, as required in § 60.5155(a).

(4) Records showing the periods when no qualified operators were accessible for 2 weeks or more along with copies of reports submitted as required in § 60.5155(b).

(d) *Air pollution control device inspections.* Records of the results of initial and annual air pollution control device inspections conducted as specified in §§ 60.5195 and 60.5220(c), including any required maintenance and any repairs not completed within 10 days of an inspection or the timeframe established by the Administrator.

(e) *Performance test reports.*

(1) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and standards and/or to establish operating limits, as applicable.

(2) Retain a copy of the complete performance test report, including calculations.

(3) Keep a record of the log of the quantity of sewage sludge burned during the performance tests, as required in § 60.5220(a)(2).

(4) Keep any necessary records to demonstrate that the performance test was conducted under conditions representative of normal operations.

(f) *Continuous monitoring data.* Records of the following data, as applicable:

(1) For continuous opacity monitoring systems, all 6-minute average and 1-hour block average levels of opacity.

(2) For continuous emissions monitoring systems, all 1-hour average concentrations of particulate matter, hydrogen chloride, carbon monoxide, dioxins/furans, mercury, nitrogen oxides, sulfur dioxide, cadmium, and lead emissions.

(3) For continuous automated sampling systems, all average concentrations measured for mercury and dioxins/furans at the frequencies specified in your monitoring plan.

(4) For continuous parameter monitoring systems:

(i) All 1-hour average values recorded for the following operating parameters, as applicable:

(A) Dry sludge feed rate and combustion chamber temperature (or afterburner temperature).

(B) If a wet scrubber is used to comply with the rule, pressure drop across the wet scrubber system, liquor flow rate to the wet scrubber, and liquor pH as introduced to the wet scrubber.

(C) If an electrostatic precipitator is used to comply with the rule, voltage of the electrostatic precipitator collection plates or amperage of the electrostatic precipitator collection plates, and effluent water flow rate at the outlet of the wet electrostatic precipitator.

(D) If activated carbon injection is used to comply with the rule, mercury sorbent flow rate and carrier gas flow rate or pressure drop, as applicable.

(ii) Daily average values and composite sample values for sludge moisture content.

(iii) If a fabric filter is used to comply with the rule, the date, time, and duration of each alarm and the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken. You must also record the percent of operating time during each 6-month period that the alarm sounds, calculated as specified in § 60.5170(b).

(iv) For other control devices for which you must establish operating limits under § 60.5175, you must maintain data collected for all operating parameters used to determine compliance with the operating limits, at the frequencies specified in your monitoring plan.

(g) *Other records for continuous monitoring systems.* You must keep the following records, as applicable:

(1) Keep records of any notifications to the Administrator in § 60.4915(h)(1) of starting or stopping use of a continuous monitoring system for determining compliance with any emissions limit.

(2) Keep records of any requests under § 60.5220(b)(5) that compliance with the emission limits (except opacity) be determined using carbon dioxide measurements corrected to an equivalent of 7 percent oxygen.

(3) If activated carbon injection is used to comply with the rule, the type of sorbent used and any changes in the type of sorbent used.

(h) *Deviation Reports.* Records of any deviation reports submitted under § 60.5235(e) and (f).

(i) *Equipment specifications and operation and maintenance requirements.* Equipment specifications and related operation and maintenance requirements received from vendors for the incinerator, emission controls, and monitoring equipment.

(j) *Calibration of monitoring devices.* Records of calibration of any monitoring devices as required under §§ 60.5220 and 60.5225.

(k) *Monitoring plan and performance evaluations for continuous monitoring systems.* Records of the monitoring plan required under § 60.5200, and records of performance evaluations required under § 60.5205(b)(5).

(l) *Less frequent testing.* Any records required to document that your SSI unit qualifies for less frequent testing under § 60.5205(a)(3).

(m) *Use of bypass stack.* Records indicating use of the bypass stack, including dates, times, and durations as required under § 60.5225(c).

§ 60.5235 What reports must I submit?

You must submit the reports specified in paragraphs (a) through (i) of this section. See Table 6 to this subpart for a summary of these reports.

(a) *Increments of progress report.* If you plan to achieve compliance more than 1 year following the effective date of State plan approval, you must submit the following reports, as applicable:

(1) A final control plan as specified in §§ 60.5085(a) and 60.5110.

(2) You must submit your notification of achievement of increments of progress no later than 10 business days after the compliance date for the increment as specified in §§ 60.5095 and 60.5100.

(3) If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the date for that increment, as specified in § 60.5105.

(4) If you plan to close your SSI unit rather than comply with the State plan, submit a closure notification as specified in § 60.5125.

(b) *Initial compliance report.* You must submit the following information no later than 60 days following the initial performance test.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report.

(4) The complete test report for the initial performance test results obtained by using the test methods specified in Table 2 or 3 to this subpart.

(5) If an initial performance evaluation of a continuous monitoring system was conducted, the results of that initial performance evaluation.

(6) The values for the site-specific operating limits established pursuant to §§ 60.5170 and 60.5175 and the calculations and methods used to establish each operating limit.

(7) If you are using a fabric filter to comply with the emission limits, documentation that a bag leak detection system has been installed and is being operated, calibrated, and maintained as required by § 60.5170(b).

(8) The results of the initial air pollution control device inspection required in § 60.5195, including a description of repairs.

(c) *Annual compliance report.* You must submit an annual compliance report that includes the items listed in paragraphs (c)(1) through (c)(15) of this section for the reporting period specified in paragraph (c)(3) of this section. You must submit your first annual compliance report no later than 12 months following the submission of the initial compliance report in paragraph (b) of this section. You must submit subsequent annual compliance reports no more than 12 months following the previous annual compliance report. (If the unit is subject to permitting requirements under title V of the Clean Air Act, you may be required by the permit to submit these reports more frequently.)

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If a performance test was conducted during the reporting period, the results of that performance test.

(i) If operating limits were established during the performance test, include the value for each operating limit and the method used to establish each operating limit, including calculations.

(ii) If activated carbon is used during the performance test, include the type of activated carbon used.

(5) For each pollutant and operating parameter recorded using a continuous monitoring system, the highest recorded 3-hour average and the lowest recorded 3-hour average during the reporting period, as applicable.

(6) If there are no deviations during the reporting period from any emission limit, emission standard, or operating limit that applies to you, a statement that there were no deviations from the emission limits, emission standard, or operating limits.

(7) Information for bag leak detection systems recorded under § 60.5230(f)(4)(iii).

(8) If a performance evaluation of a continuous monitoring system was conducted, the results of that performance evaluation. If new operating limits were established during the performance evaluation, include your calculations for establishing those operating limits.

(9) If you met the requirements of § 60.5205(a)(3) and did not conduct a performance test during the reporting period, you must include the dates of the last three performance tests, a comparison of the emission level you achieved in the last three performance tests to the 75 percent emission limit threshold specified in § 60.5205(a)(3)(i)(B), and a statement as to whether there have been any process changes and whether the process change resulted in an increase in emissions.

(10) Documentation of periods when all qualified sewage sludge incineration unit operators were unavailable for more than 8 hours, but less than 2 weeks.

(11) Results of annual air pollution control device inspections recorded under § 60.5230(d) for the reporting period, including a description of repairs.

(12) If there were no periods during the reporting period when your continuous monitoring systems had a malfunction, a statement that there were no periods during which your continuous monitoring systems had a malfunction.

(13) If there were no periods during the reporting period when a continuous monitoring system was out of control, a statement that there were no periods during which your continuous monitoring systems were out of control.

(14) If there were no operator training deviations, a statement that there were no such deviations during the reporting period.

(15) If you did not make revisions to your site-specific monitoring plan during the reporting period, a statement that you did not make any revisions to your site-specific monitoring plan during the reporting period. If you made revisions to your site-specific monitoring plan during the reporting period, a copy of the revised plan.

(d) *Deviation reports.*

(1) You must submit a deviation report if:

(i) Any recorded 4-hour rolling average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart.

(ii) Any recorded daily average sludge moisture content is outside the allowable range.

(iii) The bag leak detection system alarm sounds for more than 5 percent of the operating time for the 6-month reporting period.

(iv) Any recorded 4-hour rolling average emissions level is above the emission limit, if a continuous monitoring system is used to comply with an emission limit.

(v) Any opacity level recorded under § 60.5185(b)(5) that is above the opacity limit, if a continuous opacity monitoring system is used.

(vi) There are visible emissions of combustion ash from an ash conveying system for more than 5 percent of the hourly observation period.

(vii) A performance test was conducted that deviated from any emission limit in Table 2 or 3 to this subpart.

(viii) A continuous monitoring system was out of control.

(ix) You had a malfunction (*e.g.,* continuous monitoring system malfunction) that caused or may have caused any applicable emission limit to be exceeded.

(2) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

(3) For each deviation where you are using a continuous monitoring system to comply with an associated emission limit or operating limit, report the items described in paragraphs (d)(3)(i) through (d)(3)(viii) of this section.

(i) Company name and address.

(ii) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(iii) The calendar dates and times your unit deviated from the emission limits, emission standards, or operating limits requirements.

(iv) The averaged and recorded data for those dates.

(v) Duration and cause of each deviation from the following:

(A) Emission limits, emission standards, operating limits, and your corrective actions.

(B) Bypass events and your corrective actions.

(vi) Dates, times, and causes for monitor downtime incidents.

(vii) A copy of the operating parameter monitoring data during each deviation and any test report that documents the emission levels.

(viii) If there were periods during which the continuous monitoring system had a malfunction or was out of control, you must include the following information for each deviation from an emission limit or operating limit:

(A) The date and time that each malfunction started and stopped.

(B) The date, time, and duration that each continuous monitoring system was inoperative, except for zero (low-level) and high-level checks.

(C) The date, time, and duration that each continuous monitoring system was out of control, including start and end dates and hours and descriptions of corrective actions taken.

(D) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of malfunction, during a period when the system was out of control, or during another period.

(E) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(F) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(G) A summary of the total duration of continuous monitoring system downtime during the reporting period, and the total duration of continuous monitoring system downtime as a percent of the total operating time of the SSI unit at which the continuous monitoring system downtime occurred during that reporting period.

(H) An identification of each parameter and pollutant that was monitored at the SSI unit.

(I) A brief description of the SSI unit.

(J) A brief description of the continuous monitoring system.

(K) The date of the latest continuous monitoring system certification or audit.

(L) A description of any changes in continuous monitoring system, processes, or controls since the last reporting period.

(4) For each deviation where you are not using a continuous monitoring system to comply with the associated emission limit or operating limit, report the following items:

(i) Company name and address.

(ii) Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report.

(iii) The total operating time of each affected source during the reporting period.

(iv) The calendar dates and times your unit deviated from the emission limits, emission standards, or operating limits requirements.

(v) The averaged and recorded data for those dates.

(vi) Duration and cause of each deviation from the following:

(A) Emission limits, emission standards, operating limits, and your corrective actions.

(B) Bypass events and your corrective actions.

(vii) A copy of any performance test report that showed a deviation from the emission limits or standards.

(viii) A brief description of any malfunction reported in paragraph (d)(1)(viii) of this section, including a description of actions taken during the malfunction to minimize emissions in accordance with § 60.11(d) and to correct the malfunction.

(e) *Qualified operator deviation.*

(1) If all qualified operators are not accessible for 2 weeks or more, you must take the two actions in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) Submit a notification of the deviation within 10 days that includes the three items in paragraphs (e)(1)(i)(A) through (e)(1)(i)(C) of this section.

(A) A statement of what caused the deviation.

(B) A description of actions taken to ensure that a qualified operator is accessible.

(C) The date when you anticipate that a qualified operator will be available.

(ii) Submit a status report to the Administrator every 4 weeks that includes the three items in paragraphs (e)(1)(ii)(A) through (e)(1)(ii)(C) of this section.

(A) A description of actions taken to ensure that a qualified operator is accessible.

(B) The date when you anticipate that a qualified operator will be accessible.

(C) Request for approval from the Administrator to continue operation of the SSI unit.

(2) If your unit was shut down by the Administrator, under the provisions of § 60.5155(b)(2)(i), due to a failure to provide an accessible qualified operator, you must notify the Administrator within five days of meeting § 60.5155(b)(2)(ii) that you are resuming operation.

(f) *Notification of a force majeure.* If a force majeure is about to occur, occurs, or has occurred for which you intend to assert a claim of force majeure:

(1) You must notify the Administrator, in writing as soon as practicable following the date you first knew, or through due diligence, should have known that the event may cause or caused a delay in conducting a performance test beyond the regulatory deadline, but the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification must occur as soon as practicable.

(2) You must provide to the Administrator a written description of the force majeure event and a rationale for attributing the delay in conducting the performance test beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which you propose to conduct the performance test.

(g) *Other notifications and reports required.* You must submit other notifications as provided by § 60.7 and as follows:

(1) You must notify the Administrator 1 month before starting or stopping use of a continuous monitoring system for determining compliance with any emission limit.

(2) You must notify the Administrator at least 30 days prior to any performance test conducted to comply with the provisions of this subpart, to afford the Administrator the opportunity to have an observer present.

(3) As specified in § 60.5220(a)(8), you must notify the Administrator at least 7 days prior to the date of a rescheduled performance test for which notification was previously made in paragraph (g)(2) of this section.

(h) *Report submission form.*

(1) Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

(2) After December 31, 2011, within 60 days after the date of completing each performance evaluation or performance test conducted to demonstrate compliance with this subpart, you must submit the relative accuracy test audit data and performance test data, except opacity, to EPA by successfully submitting the data electronically into EPA's Central Data Exchange by using the Electronic Reporting Tool (*see http://www.epa.gov/ttn/chief/ert/ert tool.html/*).

(i) *Changing report dates.* If the Administrator agrees, you may change the semiannual or annual reporting dates. *See* § 60.19(c) for procedures to seek approval to change your reporting date.

Model Rule—Title V Operating Permits

§ 60.5240 Am I required to apply for and obtain a title V operating permit for my existing SSI unit?

Yes, if you are subject to an applicable EPA-approved and effective Clean Air Act section 111(d)/129 State or tribal plan or an applicable and effective Federal plan, you are required to apply for and obtain a title V operating permit for your existing SSI unit unless you meet the relevant requirements for an exemption specified in § 60.5065.

§ 60.5245 When must I submit a title V permit application for my existing SSI unit?

(a) If your existing SSI unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted on or before the earlier of the dates specified in paragraphs (a)(1) through (a)(3) of this section. (*See* sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act and 40 CFR 70.5(a)(1)(i) and 40 CFR 71.5(a)(1)(i)).

(1) 12 months after the effective date of any applicable EPA-approved Clean Air Act section 111(d)/129 State or tribal plan.

(2) 12 months after the effective date of any applicable Federal plan.

(3) [THE DATE 3 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**].

(b) For any existing unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation of this subpart applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable Clean Air Act section 111(d)/129 State or tribal plan is approved by EPA and becomes effective.

(c) If your existing unit is subject to title V as a result of some triggering requirement(s) other than those specified in paragraphs (a) and (b) of this section (for example, a unit may be a major source or part of a major source), then your unit may be required to apply for a title V permit prior to the deadlines specified in paragraphs (a) and (b). If more than one requirement triggers a source's obligation to apply for a title V permit, the 12-month timeframe for filing a title V permit application is triggered by the requirement which first causes the source to be subject to title V. (See section 503(c) of the Clean Air Act and 40 CFR 70.3(a) and (b), 40 CFR 70.5(a)(1)(i), 40 CFR 71.3(a) and (b), and 40 CFR 71.5(a)(1)(i).)

(d) A "complete" title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 40 CFR 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. (*See* sections 503(d) and 502(a) of the

Clean Air Act and 40 CFR 70.7(b) and 40 CFR 71.7(b).)

Model Rule—Definitions

§ 60.5250 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and § 60.2.

Administrator means:

(1) For units covered by the Federal plan, the Administrator of the EPA or his/her authorized representative.

(2) For units covered by an approved State plan, the director of the State air pollution control agency or his/her authorized representative.

Affirmative defense means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

Auxiliary fuel means natural gas, liquefied petroleum gas, fuel oil, or diesel fuel.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.,* baghouse) in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other principle to monitor relative particulate matter loadings.

Bypass stack means a device used for discharging combustion gases to avoid severe damage to the air pollution control device or other equipment.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Co-fired combustor means a unit combusting sewage sludge or dewatered sludge pellets with other fuels or wastes (*e.g.,* coal, clean biomass, municipal solid waste, commercial or institutional waste, hospital medical infectious waste, unused pharmaceuticals, other solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of sewage sludge.

Continuous automated sampling system means the total equipment and procedures for automated sample collection and sample recovery/analysis to determine a pollutant concentration or emission rate by collecting a single integrated sample(s) or multiple integrated sample(s) of the pollutant (or diluent gas) for subsequent on- or off-site analysis; integrated sample(s) collected are representative of the emissions for the sample time as specified by the applicable requirement.

Continuous emissions monitoring system means a monitoring system for continuously measuring and recording the emissions of a pollutant from an affected facility.

Continuous monitoring system (CMS) means a continuous emissions monitoring system, continuous automated sampling system, continuous parameter monitoring system, continuous opacity monitoring system, or other manual or automatic monitoring that is used for demonstrating compliance with an applicable regulation on a continuous basis as defined by this subpart. The term refers to the total equipment used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

Continuous parameter monitoring system means a monitoring system for continuously measuring and recording operating conditions associated with air pollution control device systems (e.g., temperature, pressure, and power).

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limit, operating limit, or operator qualification and accessibility requirements.

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit.

Dioxins/furans means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Electrostatic precipitator or wet electrostatic precipitator means an air pollution control device that uses both electrical forces and, if applicable, water to remove pollutants in the exit gas from a sewage sludge incinerator stack.

Existing sewage sludge incineration unit means a sewage sludge incineration unit the construction of which is commenced on or before October 14, 2010.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media, also known as a baghouse.

Fluidized bed incinerator means an enclosed device in which organic matter and inorganic matter in sewage sludge are combusted in a bed of particles suspended in the combustion chamber gas.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions. During periods of malfunction, the operator shall operate within established emissions and operating limits and shall continue monitoring all applicable operating parameters until all waste has been combusted or until the malfunction ceases, whichever comes first.

Maximum feed rate means 110 percent of the highest 3-hour average dry charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limits and standards.

Modification means a change to an SSI unit later than [THE DATE 6 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**] and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the SSI unit (not including the cost of land) updated to current costs (current dollars). To determine what systems are within the boundary of the SSI unit used to calculate these costs, see the definition of SSI unit.

(2) Any physical change in the SSI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Modified sewage sludge incineration unit means an SSI unit that undergoes a modification, as defined in this section.

Multiple hearth incinerator means a circular steel furnace that contains a number of solid refractory hearths and a central rotating shaft; rabble arms that are designed to slowly rake the sludge on the hearth are attached to the rotating shaft. Dewatered sludge enters at the top and proceeds downward through the furnace from hearth to hearth, pushed along by the rabble arms.

Opacity means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

Operating day means a 24-hour period between 12:00 midnight and the following midnight during which any

amount of sewage sludge is combusted at any time in the SSI unit.

Particulate matter means filterable particulate matter emitted from SSI units as measured by Method 5 at 40 CFR part 60, appendix A–3 or Methods 26A or 29 at 40 CFR part 60, appendix A–8.

Power input to the electrostatic precipitator means the product of the test-run average secondary voltage and the test-run average secondary amperage to the electrostatic precipitator collection plates.

Process change means that any of the following have occurred:

(1) A change in the process employed at the wastewater treatment facility associated with the affected SSI unit (*e.g.,* the addition of tertiary treatment at the facility, which changes the method used for disposing of process solids and processing of the sludge prior to incineration).

(2) A change in the air pollution control devices used to comply with the emission limits for the affected SSI unit (e.g., change in the sorbent used for activated carbon injection).

(3) An allowable increase in the quantity of wastewater received from an industrial source by the wastewater treatment facility.

Sewage sludge means solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incineration unit or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

Sewage sludge feed rate means the rate at which sewage sludge is fed into the incinerator unit.

Sewage sludge incineration (SSI) unit means an incineration unit combusting sewage sludge for the purpose of reducing the volume of the sewage sludge by removing combustible matter. Sewage sludge incineration unit designs include fluidized bed and multiple hearth.

Shutdown means the period of time after all sewage sludge has been combusted in the primary chamber.

Solid waste means any garbage, refuse, sewage sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Standard conditions, when referring to units of measure, means a temperature of 68 °F (20 °C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup means the period of time between the activation, including the firing of fuels (*e.g.,* natural gas or distillate oil), of the system and the first feed to the unit.

Toxic equivalency means the product of the concentration of an individual dioxin congener in an environmental mixture and the corresponding estimate of the compound-specific toxicity relative to tetrachlorinated dibenzo-p-dioxin, referred to as the toxic equivalency factor for that compound. Table 5 to this subpart lists the toxic equivalency factors.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

You means the owner or operator of an affected SSI unit.

TABLE 1 TO SUBPART MMMM OF PART 60—MODEL RULE—INCREMENTS OF PROGRESS AND COMPLIANCE SCHEDULES FOR EXISTING SEWAGE SLUDGE INCINERATION UNITS

Comply with these increments of progress	By these dates [a]
Increment 1—Submit final control plan.	(Dates to be specified in State plan)
Increment 2—Final compliance.	(Dates to be specified in State plan) [b]

[a] Site-specific schedules can be used at the discretion of the State.

[b] The date can be no later than 3 years after the effective date of State plan approval or [THE DATE 5 YEARS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] for SSI units that commenced construction on or before October 14, 2010.

TABLE 2 TO SUBPART MMMM OF PART 60—MODEL RULE—EMISSION LIMITS AND STANDARDS FOR EXISTING FLUIDIZED BED SEWAGE SLUDGE INCINERATION UNITS

For the air pollutant	You must meet this emission limit [a]	Using these averaging methods and minimum sampling volumes or durations	And determining compliance using this method
Particulate matter	12 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters sample per run).	Performance test (Method 5 at 40 CFR part 60, appendix A–3; Method 26A or Method 29 at 40 CFR part 60, appendix A–8).
Hydrogen chloride	0.49 parts per million by dry volume.	3-run average (For Method 26, collect a minimum volume of 200 liters per run. For Method 26A, collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Carbon monoxide	56 parts per million by dry volume	3-run average (collect sample for a minimum duration of one hour per run).	Performance test (Method 10, 10A, or 10B at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	0.61 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).

TABLE 2 TO SUBPART MMMM OF PART 60—MODEL RULE—EMISSION LIMITS AND STANDARDS FOR EXISTING FLUIDIZED BED SEWAGE SLUDGE INCINERATION UNITS—Continued

For the air pollutant	You must meet this emission limit [a]	Using these averaging methods and minimum sampling volumes or durations	And determining compliance using this method
Dioxins/furans (toxic equivalency basis).	0.056 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Mercury	0.0033 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02, collect a minimum volume of 3 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 at 40 CFR part 60, appendix A–8; Method 30B at 40 CFR part 60, appendix A (when published in the **Federal Register**); or ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method).
Oxides of nitrogen	63 parts per million by dry volume	3-run average (Collect sample for a minimum duration of one hour per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Sulfur dioxide	22 parts per million by dry volume	3-run average (For Method 6, collect a minimum volume of 200 liters per run. For Method 6C, collect sample for a minimum duration of one hour per run).	Performance test (Method 6 or 6C at 40 CFR part 40, appendix A–4; or ASNI/ASME PTC–19.10–1981 Flue and Exhaust Gas Analysis [Part 10, Instruments and Apparatus]).
Cadmium	0.0019 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Lead	0.0098 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters sample per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8.
Opacity	0 percent	6-minute averages, three 1-hour observation periods.	Performance test (Method 9 at 40 CFR part 60, appendix A–4).
Fugitive emissions from ash handling.	Visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods	Visible emission test (Method 22 of appendix A–7 of this part).

[a] All emission limits (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 3 TO SUBPART MMMM OF PART 60—MODEL RULE—EMISSION LIMITS AND STANDARDS FOR EXISTING MULTIPLE HEARTH SEWAGE SLUDGE INCINERATION UNITS

For the air pollutant	You must meet this emission limit [a]	Using these averaging methods and minimum sampling volumes or durations	And determining compliance using this method
Particulate matter	80 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 5 at 40 CFR part 60, appendix A–3; Method 26A or Method 29 at 40 CFR part 60, appendix A–8).
Hydrogen chloride	1.0 parts per million by dry volume.	3-run average (For Method 26, collect a minimum volume of 200 liters per run. For Method 26A, collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 26 or 26A at 40 CFR part 60, appendix A–8).
Carbon monoxide	3,900 parts per million by dry volume.	3-run average (collect sample for a minimum duration of one hour per run).	Performance test (Method 10, 10A, or 10B at 40 CFR part 60, appendix A–4).
Dioxins/furans (total mass basis)	5.0 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).
Dioxins/furans (toxic equivalency basis).	0.32 nanograms per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 23 at 40 CFR part 60, appendix A–7).

TABLE 3 TO SUBPART MMMM OF PART 60—MODEL RULE—EMISSION LIMITS AND STANDARDS FOR EXISTING MULTIPLE HEARTH SEWAGE SLUDGE INCINERATION UNITS—Continued

For the air pollutant	You must meet this emission limit [a]	Using these averaging methods and minimum sampling volumes or durations	And determining compliance using this method
Mercury	0.02 milligrams per dry standard cubic meter.	3-run average (For Method 29 and ASTM D6784–02, collect a minimum volume of 3 dry standard cubic meters per run. For Method 30B, collect a minimum sample as specified in Method 30B at 40 CFR part 60, appendix A).	Performance test (Method 29 at 40 CFR part 60, appendix A–8; Method 30B at 40 CFR part 60, appendix A (when published in the **Federal Register**); or ASTM D6784–02, Standard Test Method for Elemental, Oxidized, Particle Bound and Total Mercury in Flue Gas Generated from Coal-Fired Stationary Sources (Ontario Hydro Method).
Oxides of nitrogen	210 parts per million by dry volume.	3-run average (Collect sample for a minimum duration of one hour per run).	Performance test (Method 7 or 7E at 40 CFR part 60, appendix A–4).
Sulfur dioxide	26 parts per million by dry volume	3-run average (For Method 6, collect a minimum volume of 200 liters per run. For Method 6C, collect sample for a minimum duration of one hour per run).	Performance test (Method 6 or 6C at 40 CFR part 40, appendix A–4; or ASNI/ASME PTC–19.10–1981 Flue and Exhaust Gas Analysis ([Part 10, Instruments and Apparatus]).
Cadmium	0.095 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8).
Lead	0.30 milligrams per dry standard cubic meter.	3-run average (collect a minimum volume of 3 dry standard cubic meters per run).	Performance test (Method 29 at 40 CFR part 60, appendix A–8.
Opacity	10 percent	6-minute averages, three 1-hour observation periods.	Performance test (Method 9 at 40 CFR part 60, appendix A–4).
Fugitive emissions from ash handling.	Visible emissions of combustion ash from an ash conveying system (including conveyor transfer points) for no more than 5 percent of the hourly observation period.	Three 1-hour observation periods	Visible emission test (Method 22 of appendix A–7 of this part).

[a] All emission limits (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.

TABLE 4 TO SUBPART MMMM OF PART 60—MODEL RULE—OPERATING PARAMETERS FOR EXISTING SEWAGE SLUDGE INCINERATION UNITS [a]

For these operating parameters	You must establish these operating limits	And monitor using these minimum frequencies		
		Data measurement	Data recording [b]	Averaging time for compliance
All sewage sludge incineration units				
Dry sludge feed rate	Maximum dry sludge feed rate	Continuous	Hourly	4-hour rolling.[c]
Combustion chamber temperature (not required if afterburner temperature is monitored).	Minimum combustion temperature or afterburner temperature	Continuous	Every 15 minutes	4-hour rolling.[c]
Sludge moisture content	Range of moisture content (%)	Composite of three samples taken 6 hours apart.	Daily	Daily.
Scrubber				
Pressure drop across each wet scrubber or amperage to each wet scrubber.	Minimum pressure drop or minimum amperage.	Continuous	Every 15 minutes	4-hour rolling.[c]
Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	4-hour rolling.[c]
Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	4-hour rolling.[c]
Fabric filter				
Alarm time of the bag leak detection system alarm.	Maximum alarm time of the bag leak detection system alarm (this operating limit is provided in § 60.4850 and is not established on a site-specific basis)			

TABLE 4 TO SUBPART MMMM OF PART 60—MODEL RULE—OPERATING PARAMETERS FOR EXISTING SEWAGE SLUDGE INCINERATION UNITS [a]—Continued

For these operating parameters	You must establish these operating limits	And monitor using these minimum frequencies		
		Data measurement	Data recording [b]	Averaging time for compliance
Electrostatic precipitator				
Secondary voltage of the electrostatic precipitator collection plates. Secondary amperage of the electrostatic precipitator collection plates.	Minimum power input to the electrostatic precipitator collection plates.	Continuous	Hourly	4-hour rolling.[c]
Effluent water flow rate at the outlet of the electrostatic precipitator.	Maximum effluent water flow rate at the outlet of the electrostatic precipitator.	Hourly	Hourly	4-hour rolling.[c]
Activated carbon injection				
Mercury sorbent injection rate	Minimum mercury sorbent injection rate.	Hourly	Hourly	4-hour rolling.[c]
Dioxin/furan sorbent injection rate	Minimum dioxin/furan sorbent injection rate.			
Carrier gas flow rate or carrier gas pressure drop.	Minimum carrier gas flow rate or minimum carrier gas pressure drop.	Continuous	Every 15 minutes	4-hour rolling.[c]
Afterburner				
Temperature of the afterburner combustion chamber.	Minimum temperature of the afterburner combustion chamber.	Continuous	Every 15 minutes	4-hour rolling.[a]

[a] As specified in § 60.5190, you may use a continuous emissions monitoring system, continuous opacity monitoring system, or continuous automated sampling system in lieu of establishing certain operating limits.

[b] This recording time refers to the frequency that the continuous monitor or other measuring device initially records data. For all data recorded every 15 minutes, you must calculate hourly arithmetic averages. For all parameters except sludge moisture content, you use hourly averages to calculate the 4-hour rolling averages to demonstrate compliance. You maintain records of 1-hour averages.

[c] Calculated each hour as the average of the previous 4 operating hours.

TABLE 5 TO SUBPART MMMM OF PART 60—MODEL RULE—TOXIC EQUIVALENCY FACTORS

Dioxin/furan congener	Toxic equivalency factor
2,3,7,8-tetrachlorinated dibenzo-p-dioxin	1
1,2,3,7,8-pentachlorinated dibenzo-p-dioxin	1
1,2,3,4,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,7,8,9-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,6,7,8-hexachlorinated dibenzo-p-dioxin	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzo-p-dioxin	0.01
octachlorinated dibenzo-p-dioxin	0.0003
2,3,7,8-tetrachlorinated dibenzofuran	0.1
2,3,4,7,8-pentachlorinated dibenzofuran	0.3
1,2,3,7,8-pentachlorinated dibenzofuran	0.03
1,2,3,4,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,7,8,9-hexachlorinated dibenzofuran	0.1
2,3,4,6,7,8-hexachlorinated dibenzofuran	0.1
1,2,3,4,6,7,8-heptachlorinated dibenzofuran	0.01
1,2,3,4,7,8,9-heptachlorinated dibenzofuran	0.01
octachlorinated dibenzofuran	0.0003

TABLE 6 TO SUBPART MMMM OF PART 60—MODEL RULE—SUMMARY OF REPORTING REQUIREMENTS FOR EXISTING SEWAGE SLUDGE INCINERATION UNITS [a]

Report	Due date	Contents	Reference
Increments of progress report	No later than 10 business days after the compliance date for the increment.	• Final control plan including air pollution control device descriptions, process changes, type of waste to be burned, and the maximum design sewage sludge burning capacity.	§ 60.5235(a)

TABLE 6 TO SUBPART MMMM OF PART 60—MODEL RULE—SUMMARY OF REPORTING REQUIREMENTS FOR EXISTING SEWAGE SLUDGE INCINERATION UNITS [a]—Continued

Report	Due date	Contents	Reference
Initial compliance report	No later than 60 days following the initial performance test.	• Notification of any failure to meet an increment of progress. • Notification of any closure. • Company name and address • Statement by a responsible official, with that official's name, title, and signature, certifying the accuracy of the content of the report. • Date of report. • Complete test report for the initial performance test. • Results of CMS [b] performance evaluation. • The values for the site-specific operating limits and the calculations and methods used to establish each operating limit. • Documentation of installation of bag leak detection system for fabric filter. • Results of initial air pollution control device inspection, including a description of repairs.	§ 60.5235(b)
Annual compliance report	No later than 12 months following the submission of the initial compliance report; subsequent reports are to be submitted no more than 12 months following the previous report.	• Company name and address • Statement and signature by responsible official. • Date and beginning and ending dates of report. • If a performance test was conducted during the reporting period, the results of the test, including any new operating limits and associated calculations and the type of activated carbon used, if applicable. • For each pollutant and operating parameter recorded using a CMS, the highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable. • If no deviations from emission limits, emission standards, or operating limits occurred, a statement that no deviations occurred. • If a fabric filter is used, the date, time, and duration of alarms. • If a performance evaluation of a CMS was conducted, the results, including any new operating limits and their associated calculations. • If you met the requirements of § 60.5205(a)(3) and did not conduct a performance test, include the dates of the last three performance tests, a comparison to the 75 percent emission limit threshold of the emission level achieved in the last three performance tests, and a statement as to whether there have been any process changes. • Documentation of periods when all qualified SSI unit operators were unavailable for more than 8 hours but less than 2 weeks. • Results of annual pollutions control device inspections, including description of repairs. • If there were no periods during which your CMSs had malfunctions, a statement that there were no periods during which your CMSs had malfunctions.	§ 60.5235(c)

TABLE 6 TO SUBPART MMMM OF PART 60—MODEL RULE—SUMMARY OF REPORTING REQUIREMENTS FOR EXISTING SEWAGE SLUDGE INCINERATION UNITS [a]—Continued

Report	Due date	Contents	Reference
		• If there were no periods during which your CMSs were out of control, a statement that there were no periods during which your CMSs were out of control. • If there were no operator training deviations, a statement that there were no such deviations. • Information on monitoring plan revisions, including a copy of any revised monitoring plan.	
Deviation report (deviations from emission limits, emission standards, or operating limits, as specified in § 60.5235(e)(1)).	By August 1 of a calendar year for data collected during the first half of the calendar year; by February 1 of a calendar year for data collected during the second half of the calendar year.	*If using a CMS:* ..... • Company name and address • Statement by a responsible official • The calendar dates and times your unit deviated from the emission limits or operating limits • The averaged and recorded data for those dates. • Duration and cause of each deviation. • Dates, times, and causes for monitor downtime incidents. • A copy of the operating parameter monitoring data during each deviation and any test report that documents the emission levels. • For periods of CMS malfunction or when a CMS was out of control, you must include the information specified in § 60.5235(e)(3)(viii). • *If not using a CMS:* • Company name and address. • Statement by a responsible official. • The total operating time of each affected SSI. • The calendar dates and times your unit deviated from the emission limits, emission standard, or operating limits. • The averaged and recorded data for those dates. • Duration and cause of each deviation. • A copy of any performance test report that showed a deviation from the emission limits or standards. • A brief description of any malfunction, a description of actions taken during the malfunction to minimize emissions, and corrective action taken.	§ 60.5235(d)
Notification of qualified operator deviation (if all qualified operators are not accessible for 2 weeks or more).	Within 10 days of deviation	• Statement of cause of deviation ..... • Description of actions taken to ensure that a qualified operator will be available • The date when a qualified operator will be accessible.	§ 60.5235(e)
Notification of status of qualified operator deviation.	Every 4 weeks following notification of deviation.	• Description of actions taken to ensure that a qualified operator is accessible. • The date when you anticipate that a qualified operator will be accessible. • Request for approval to continue operation.	§ 60.5235(e)
Notification of resumed operation following shutdown (due to qualified operator deviation and as specified in § 60.5155(b)(2)(i).	Within five days of obtaining a qualified operator and resuming operation.	• Notification that you have obtained a qualified operator and are resuming operation.	§ 60.5235(e)

TABLE 6 TO SUBPART MMMM OF PART 60—MODEL RULE—SUMMARY OF REPORTING REQUIREMENTS FOR EXISTING SEWAGE SLUDGE INCINERATION UNITS [a]—Continued

Report	Due date	Contents	Reference
Notification of a force majeure	As soon as practicable following the date you first knew, or through due diligence should have known that the event may cause or have caused a delay in conducting a performance test beyond the regulatory deadline; the notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification must occur as soon as practicable.	• Description of the force majeure event • Rationale for attributing the delay in conducting the performance test beyond the regulatory deadline to the force majeure. • Description of the measures taken or to be taken to minimize the delay. • Identification of the date by which you propose to conduct the performance test.	§ 60.5235(f)
Notification of intent to start or stop use of a CMS.	1 month before starting or stopping use of a CMS.	• Intent to start or stop use of a CMS	§ 60. 5235(g)
Notification of intent to conduct a performance test.	At least 30 days prior to the performance test.	• Intent to conduct a performance test to comply with this subpart.	
Notification of intent to conduct a rescheduled performance test.	At least 7 days prior to the date of a rescheduled performance test.	• Intent to conduct a rescheduled performance test to comply with this subpart.	

[a] This table is only a summary; see the referenced sections of the rule for the complete requirements.
[b] CMS means continuous monitoring system.

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Part III

Department of the Interior

Bureau of Ocean Energy Management, Regulation and Enforcement

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Increased Safety Measures for Energy Development on the Outer Continental Shelf; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management, Regulation and Enforcement

30 CFR Part 250

[Docket ID BOEM–2010–0034]

RIN 1010–AD68

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Increased Safety Measures for Energy Development on the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE), Interior.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule implements certain safety measures recommended in the report entitled, "Increased Safety Measures for Energy Development on the Outer Continental Shelf" (Safety Measures Report), dated May 27, 2010. The President directed the Department of the Interior to develop the Safety Measures Report to identify measures necessary to improve the safety of oil and gas exploration and development on the Outer Continental Shelf in light of the Deepwater Horizon event on April 20, 2010, and resulting oil spill. To implement the practices recommended in the Safety Measures Report, the Bureau of Ocean Energy Management, Regulation and Enforcement is amending drilling regulations related to well control, including: subsea and surface blowout preventers, well casing and cementing, secondary intervention, unplanned disconnects, recordkeeping, well completion, and well plugging.

DATES: *Effective Date:* This rule becomes effective on October 14, 2010. The incorporation by reference of the publication listed in the regulations is approved by the Director of the Federal Register as of October 14, 2010. Submit comments on the interim final rule by December 13, 2010. BOEMRE may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this rule by December 13, 2010.

ADDRESSES: You may submit comments on the interim final rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD68 as an identifier in your message. *See* also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry titled "Enter Keyword or ID," enter BOEM-2010-0034 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BOEMRE will post all comments.
- Mail or hand-carry comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference "Increased Safety Measures for Energy Development on the Outer Continental Shelf, 1010–AD68" in your comments and include your name and return address.
- Send comments on the information collection in this rule to: Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Cheryl Blundon; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. Please reference Information Collection 1010–0185 in your comment and include your name and address.

FOR FURTHER INFORMATION CONTACT: Amy C. White, Office of Offshore Regulatory Programs, Regulations and Standards Branch, Bureau of Ocean Energy Management, Regulation and Enforcement, 703–787–1665, *amy.white@boemre.gov.*

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I. Background

This interim final rule promulgated for the prevention of waste and conservation of natural resources of the Outer Continental Shelf, establishes regulations based on certain recommendations in the May 27, 2010, report from the Secretary of the Interior to the President entitled, "Increased Safety Measures for Energy Development on the Outer Continental Shelf" (Safety Measures Report). The President directed that the Department of the Interior (DOI) develop this report as a result of the Deepwater Horizon event on April 20, 2010. This event, which involved a blowout of the BP Macondo well and an explosion on the Transocean Deepwater Horizon mobile offshore drilling unit (MODU), resulted in the deaths of 11 workers, an oil spill of national significance, and the sinking of the Deepwater Horizon MODU. On June 2, 2010, the Secretary of the Interior directed the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) (formerly the Minerals Management Service) to adopt the recommendations contained in the Safety Measures Report and to implement them as soon as possible.

The Safety Measures Report recommended a series of steps to improve the safety of offshore oil and gas drilling operations in Federal waters. It outlined a number of specific measures designed to ensure sufficient redundancy in blowout preventers (BOPs), promote well integrity, enhance well control, and facilitate a culture of safety through operational and personnel management.

The Safety Measures Report recommended that certain measures be implemented immediately through a Notice to Lessees and Operators (NTL). It identified other measures as being appropriate to address through an emergency rulemaking process. The Safety Measures Report recognized that other recommendations would require additional review and refinement through technical reviews by the DOI, through information supplied as a result of the numerous investigations into the root causes of the Deepwater Horizon explosion, and through the longer-term recommendations of DOI strike teams and inter-agency work groups. The Safety Measures Report recommended that these other measures be addressed through notice and comment rulemaking, as appropriate.

On June 8, 2010, BOEMRE issued an NTL addressing those recommendations identified in the Safety Measures Report as warranting immediate implementation (NTL No. 2010–N05—Increased Safety Measures for Energy Development on the OCS). This interim final rule clarifies existing regulatory requirements that were addressed by certain portions of NTL No. 2010–N05. This rule incorporates specific details included in 2010–N05 by codifying these into regulations. The rule does not codify the one-time requirements from NTL No. 2010–N05, such as the one-time requirement for recertification of all BOP equipment used in new floating operations, which will be evaluated and considered for future rulemakings as appropriate.

This interim final rule also addresses measures identified in the Safety Measures Report as appropriate for

implementation through emergency rulemaking, with certain exceptions discussed later. It also includes other provisions from the Safety Measures Report that BOEMRE considers appropriate for immediate implementation in this interim final rule.

As provided for in the Safety Measures Report, BOEMRE will continue to review other safety measures. These include items that may be appropriate for rulemaking in the near future, as well as measures that will require further study, whether through DOI-led strike teams, interagency workgroups, or other means.

The following table provides a summary of the interim final rule requirements, estimated annual costs to implement the requirements, and the operator's ability to comply with the requirements. Additional discussion on all the requirements follows in the remainder of the preamble.

SUMMARY OF INTERIM FINAL RULE COMPLIANCE

Citation and requirement	Recommendation	Applies to	Operator cost to implement per year *	Operator ability to comply with requirement
§ 250.198(a)(3), All documents incorporated by reference "should" and "shall" mean "must".	Based on NTL No. 2010 N05	All operators		Administrative provision that does not impose compliance times beyond the substantive provisions involved.
§ 250.198(h)(79), Incorporation by Reference of API RP 65—Part 2 Isolating Potential Flow Zones During Well Construction.	Safety Measures Report: II.B.3.7: Enforce Tighter Primary Cementing Practices.	All applications for permit to drill (APDs) **.		Additional information provision does not impose compliance times beyond the substantive provisions involved.
§ 250.415(f), Written description of how the operator evaluated the best practices included in API RP 65–Part 2. The description must identify mechanical barriers and cementing practices to be used for each casing string.	Safety Measures Report: II.B.3.7: Enforce Tighter Primary Cementing Practices.	Submitted with APD. Applies to all APDs.		New engineering requirement. BOEMRE believes that most operators will be able to comply with this requirement with no significant delays * * * because this can be completed concurrently with other tasks.
§ 250.416(d), Include schematics of all control systems and control pods.	Safety Measures Report: I.B.5: Secondary Control System Requirement and Guidelines.	Submitted with APD. Applies to all APDs.		Information is readily available. Should not delay submission of the APD.
§ 250.416(e), Independent third party verification that the blind-shear rams installed are capable of shearing any drill pipe in the hole.	Safety Measures Report: I.C.7: Develop New Testing Requirements. Also in NTL No. N05.	Submitted with APD. Applies to all APDs.	$1,200,000	Because there are multiple engineering firms available to do this work, and because operators have had advance notice of this requirement in both the Safety Measures Report and NTL No. N05, BOEMRE believes that most operators will be able to comply with this requirement with no significant delay and provide information in the APD.
§ 250.416(f), Independent third party verification that subsea BOP is designed for specific equipment on rig and specific well design.	Safety Measures Report: I.B.2: Order BOP Equipment Compatibility Verification for Each Floating Vessel and for Each New Well. Also in NTL No. N05.	Submitted with APD. All APDs for well with subsea BOP stack. Subsea BOP stacks are usually employed in deepwater.		
§ 250.416(g), Qualification for independent third parties.	Based on NTL No. 2010 N–05.	All APDs		Related to requirements for independent third party certifications.

SUMMARY OF INTERIM FINAL RULE COMPLIANCE—Continued

Citation and requirement	Recommendation	Applies to	Operator cost to implement per year *	Operator ability to comply with requirement
§ 250.420(a)(6), Certification by a professional engineer that there are two independent tested barriers and that the casing and cementing design are appropriate.	Safety Measure Report: II.B.1.3: New Casing and Cement Design Requirements: Two Independent Barriers. This requirement was also addressed in NTL No. N05.	Submitted with APD. Applies to all APDs.	6,000,000	Because there are multiple engineering firms available to do this work and because operators have had advance notice of this requirement in both the Safety Measures Report and NTL No. N05, BOEMRE believes operators will be able to comply with this requirement with no significant delays and provide information in the APD.
§ 250.420(b)(3), Installation of dual mechanical barriers in addition to cement for final casing string.	Safety Measure Report: II.B.1.3: New Casing and Cement Design Requirements: Two Independent Barriers. This requirement was also addressed in NTL No. N05.	Completed during the casing and cementing of the well. It applies to all wells drilled.	10,300,000	Completed during the casing and cementing of the well. Compliance with this requirement may minimally increase the time to drill each well.
§ 250.423(b), The operator must perform a pressure test on the casing seal assembly to ensure proper installation of casing or liner. The operator must ensure that the latching mechanisms or lock down mechanisms are engaged upon installation of each casing string or liner.	Safety Measure Report: II.B.2.5: New Casing Installation Procedures. This requirement was also addressed in NTL No. N05.	Complied with after the installation of each casing string or liner for all wells drilled with a subsea BOP stack. It is tested after the installation of the casing or liner.	.....	Because operators had advance notice of this requirement in both the Safety Measures Report and NTL No. N05, BOEMRE believes operators should be complying with this requirement.
§ 250.423(c), The operator must perform a negative pressure test to ensure proper casing installation. This test must be performed for the intermediate and production casing strings.	Safety Measure Report: II.B.2.6: Develop Additional Requirements or Guidelines for Casing.	Tested after running the casing. All wells, involves all rigs with surface and subsurface BOPs in all water depths.	45,100,000	Compliance with this requirement will increase the time to drill each subsea well resulting in additional costs. BOEMRE estimates several hours of additional drilling time for each well.
§ 250.442(c), § 250.515(e), § 250.615(e). Have a subsea BOP stack equipped with remotely operated vehicle (ROV) intervention capability. At a minimum, the ROV must be capable of closing one set of pipe rams, closing one set of blind-shear rams, and unlatching the lower marine riser package.	Safety Measure Report: I.B.5: Secondary Control System Requirements and Guidelines. This requirement was also addressed in NTL No. N05.	Applies to all subsea BOP stacks.	.....	All rigs should be able to comply with requirement. All rigs currently have ROV intervention capability; approximately 80% of subsea BOP stacks currently have all the specified capabilities. Other 20% are expected to be able to comply promptly.
§ 250.442(c), § 250.515(e), § 250.615(e). Maintain an ROV and have a trained ROV crew on each floating drilling rig on a continuous basis.	Safety Measure Report: I.B.6: New ROV Operating Capabilities; II.A.1: Establish Deepwater Well-Control Procedure Guidelines.	Ongoing requirement. All subsea BOP stacks regardless of water depth.	.....	BOEMRE believes all rigs operating on OCS are already in compliance.
§ 250.442(f), § 250.515(e), § 250.615(e). Provide autoshear and deadman systems for dynamically positioned (DP) rigs.	Safety Measure Report: I.B.5: Secondary Control System Requirements and Guidelines.	Anytime drilling occurs with subsea BOP stacks on DP rigs.	.....	BOEMRE believes all DP rigs operating on OCS currently comply with this requirement.

SUMMARY OF INTERIM FINAL RULE COMPLIANCE—Continued

Citation and requirement	Recommendation	Applies to	Operator cost to implement per year *	Operator ability to comply with requirement
§ 250.442(e), § 250.515(e), § 250.615(e). Establish minimum requirements for personnel authorized to operate critical BOP equipment.	Safety Measure Report: II.A.1: Establish Deepwater Well-Control Procedure Guidelines.	Ongoing requirement. Applies to all personnel that operate subsea BOP stacks. Majority of drilling rigs that use subsea BOP stacks operate in deepwater.	.....	Requires trained ROV crew; for rigs not already in compliance, additional training or hiring of new crew may be necessary. Additional training could take days to weeks, depending upon how well existing crews are trained. However, BOEMRE believes no rigs should be operating without adequately trained personnel.
§ 250.446(a), § 250.516(h), § 250.516(g), § 250.617. Require documentation of BOP inspections and maintenance according to API RP 53.	Safety Measure Report: I.B.5: Secondary Control System Requirements and Guidelines.	Ongoing requirement. All BOP stacks. All water depths.	.....	All rigs should be able to comply with requirement.
§ 250.449(j), § 250.516(d)(8), § 250.616(h)(1). Test all ROV intervention functions on the subsea BOP stack during the stump test. Test at least one set of rams during the initial test on the seafloor.	Safety Measure Report: I.B.5: Secondary Control System Requirements and Guidelines; I.C.7: Develop New Testing Requirements.	During the stump test and initial test on the seafloor. All subsea BOP stacks. All water depths.	118,200,000	All rigs should be able to comply with requirement. This requirement not expected to result in significant delay. Compliance with this requirement will slightly increase the time to drill each deepwater well drilled with a subsea BOP, resulting in additional costs.
§ 250.449(k), § 250.516(d)(9), § 250.616(h)(2). Function test autoshear and deadman systems on the subsea BOP stack during the stump test. Test the deadman system during the initial test on the seafloor.	Safety Measure Report: I.B.5: Secondary Control System Requirements and Guidelines; I.C.7: Develop New Testing Requirements.			
§ 250.451(i), If the blind-shear or casing shear rams are activated in a well control situation, the BOP must be retrieved and fully inspected and tested.	Safety Measure Report: I.C.7: Develop New Testing Requirements. This requirement was also addressed in NTL No. N05.	Emergency activation of blind or casing shear rams.	2,600,000	Compliance with this requirement will increase drilling costs when such an emergency occurs.
§ 250.456(j), Before displacing kill-weight drilling fluid from the wellbore, the operator must receive approval from the District Manager. The operator must submit the reasons for displacing the kill-weight drilling fluid and provide detailed step-by-step procedures describing how the operator will safely displace these fluids.	Safety Measure Report: II.A.2: New Fluid Displacement Procedures.	Submit with APD or application for permit to modify (APM). All wells where the operator wants to displace kill-weight fluids. This could occur on all rigs that use either a surface or subsurface BOP stack. Could occur with all water depths.	.....	New requirement. Operator should be able to provide this information in APD or APM without significant delay.
Subpart O, §§ 250.1500–250.1510, Requires that rig personnel are trained in deepwater well control and the specific duties, equipment, and techniques associated with deepwater drilling.	Safety Measure Report: II.A.1: Establish Deepwater Well-Control Procedure Guidelines.	All wells drilled with subsea BOP stack.	.....	BOEMRE believes that the majority of operators have addressed this requirement. There should not be any delay for this requirement.

SUMMARY OF INTERIM FINAL RULE COMPLIANCE—Continued

Citation and requirement	Recommendation	Applies to	Operator cost to implement per year *	Operator ability to comply with requirement
§ 250.1712(g), § 250.1721(h). Certification by a professional engineer of the well abandonment design and procedures; that there will be at least two independent tested barriers, including one mechanical barrier, across each flow path during abandonment activities; and that the plug meets the requirements in the table in § 250.1715.	Safety Measure Report: II.B.1.3: New Casing and Cement Design Requirements: Two Independent Tested Barriers.	Submitted with APM. All abandonment operations regardless of BOP type or water depth.	.....	Operator should be able to comply with no significant delay and provide information in application for permit to modify (APM). Estimate that this could take an operator as much as several days to comply with new requirement. Depends on operator's internal review process.

* Costs that were not provided did not add a meaningful value in comparison of the cost of drilling a well.
** All APDs means all wells drilled with a surface BOP and all wells drilled with a subsurface BOP. Includes all water depths.
*** Requirements noted as "no significant delay" are anticipated to *require no more than 1 week to achieve compliance.* While individually each activity could take a day and possibly up to 5 days to complete, it is anticipated that companies will build this into their schedules with no resulting overall delay.

TOTAL ESTIMATES OF COSTS AND BENEFITS

Total Estimated Annual Compliance Costs	$183.1 million.
Total Estimated Annual Avoided Social Costs (Benefits)	$631.4 million—B *.

* DOI estimated the cost of a hypothetical spill in the future at $16.3 billion, and also estimated the baseline likelihood of a catastrophic blowout event and spill occurring, based on historical trends and the number of expected future wells, to be once every 26 years. These estimates are necessarily uncertain, and are discussed in more detail in the RIA. Combining the baseline likelihood of occurrence with the cost of a hypothetical spill implies that the expected annualized spill cost is about $631 million. This rulemaking will not reduce the probability of a future spill to zero; therefore, "B" in the table above represents the adjustment in annual avoided social costs expected from this rulemaking based on the non-zero remaining probability of a spill after this rule is put into place. Thus, the difference between the avoided costs with and without their rule represents its expected benefits. This remaining probability is uncertain. For example, to balance the $183 million annual cost imposed by these regulations with the expected benefits, the reliability of the well control system needs to improve by about 29 percent ($183 million/$631 million). Although we have found no studies that evaluate the degree of actual improvement that could be expected from dual mechanical barriers, negative pressure tests, and a seafloor ROV function test, we believe it reasonable to anticipate that such measures will increase the reliability of the well control systems, and therefore that the benefits of this rulemaking justify the costs.

II. Request for Comments on Interim Final Rule and Effective Date

This is an interim final rulemaking with request for comments; it is effective immediately upon publication. The Administrative Procedure Act (APA) requires that an agency publish a proposed rule in the **Federal Register** with notice and an opportunity for public comment, unless the agency, for good cause, finds that providing notice and soliciting comments in advance of promulgating the rule would be impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)). BOEMRE determined that there is good cause for publishing this interim final rule without prior notice and comment based on its findings, consistent with preliminary information that is available as a result of investigations into the Deepwater Horizon event, that certain equipment, systems, and improved practices are immediately necessary for the safety of offshore oil and gas drilling operations on the Outer Continental Shelf (OCS), and that these improved drilling practices are either not addressed or not sufficiently detailed by current regulations. Immediate imposition of the requirements contained in this interim final rule is necessary because BOEMRE views strict adherence to improved safety practices set forth herein as necessary to achieving safer conditions that, together with other wild well control and oil spill response capabilities, will allow it to permit future OCS drilling operations. Following notice and comment procedures would be impracticable in these circumstances.

Furthermore, following notice and comment procedures would be contrary to the public interest because the delay in implementation of this interim final rule could result in harm to public safety and the environment. Failure to adhere to the safety practices required by this interim final rule increases the risk of a blowout and subsequent oil spill, with serious consequences to the health and safety of workers and the environment.

As discussed in Section 5, "Justification for the Interim Final Rulemaking," while investigation and information-gathering into the Deepwater Horizon blowout and spill continues, preliminary evidence suggests problems with the Macondo well's line of defense, which could include blowout preventer (BOP) systems, casing and cementing programs, and fluid displacement procedures. Evidence further suggests that it is unlikely that these problems are unique to the Deepwater Horizon event; for example, most BOPs used in drilling on the OCS are of similar design and are produced by a limited number of manufacturers. The interim final rule's provisions thus incorporate targeted measures to promote the integrity of the well and enhance well control, including provisions specifically identified by the Safety Measures Report as warranting immediate implementation. For example, the requirement that operators have all well casing designs and cementing systems/procedures certified by a Professional Engineer.

Similarly, BOEMRE determined that the immediate necessity for improved equipment, systems, and practices also provides good cause to impose an immediate effective date. The APA requires an agency to publish a rule not less than 30 days before its effective

date, except as otherwise provided by the agency for good cause found and published with the rule (5 U.S.C. 553(d)(3)). Just as BOEMRE found that providing notice and an opportunity to comment is impracticable and contrary to the public interest, BOEMRE finds that a 30-day delay after publication of this interim final rule compromises the safety of offshore oil and gas drilling. To the extent that the 30-day period is intended to allow regulated parties to adjust to new requirements, information gathered by BOEMRE in advance of this rulemaking indicates that the oil and gas industry is well aware of the general provisions in this interim final rule. Most of the provisions in the rule were identified in the Safety Measures Report, and industry is already working to implement them.

We note that in developing the Safety Measures Report on which this interim final rule is based, the Department consulted with a wide range of experts in state and Federal governments, academic institutions, and industry and advocacy organizations. In addition, the draft recommendations of the Safety Measure Report were peer reviewed by seven experts identified by the National Academy of Engineering (NAE). Further explanation of the justification for this interim final rulemaking is provided in section V, "Justification for Interim Final Rulemaking."

While BOEMRE will not solicit comments before the effective date, BOEMRE will accept and consider public comments on this rule that are submitted within 60 days of its publication in the **Federal Register**. After reviewing the public comments, BOEMRE will publish a notice in the **Federal Register** that will respond to comments and will either:

1. Confirm this rule as a final rule with no additional changes, or

2. Issue a revised final rule with modifications, based on public comments.

III. Overview of Requirements in the Interim Final Rule

As recommended in the Safety Measures Report, this interim final rule imposes a number of prescriptive, near-term requirements. Other longer-term safety measures and performance-based standards recommended in the Safety Measures Report will be analyzed for implementation in future rulemakings. Information from the many investigations and other information sources will also be analyzed and considered in future rulemakings. In developing the Safety Measures Report on which this interim final rule is based, the Department consulted with experts in state and Federal government, academic institutions, and industry and advocacy organizations. In addition, draft recommendations were peer reviewed by seven experts identified by the NAE.

The primary purpose of this interim final rule is to clarify and incorporate safeguards that will decrease the likelihood of a blowout during drilling operations on the OCS. The safeguards address well bore integrity and well control equipment, and this interim final rule focuses on those two overarching issues. This rule will therefore promulgate OCS-wide provisions that will:

1. Establish new casing installation requirements,

2. Establish new cementing requirements (incorporate American Petroleum Institute (API) Recommended Practice (RP) 65—Part 2, Isolating Potential Flow Zones During Well Construction),

3. Require independent third party verification of blind-shear ram capability,

4. Require independent third party verification of subsea BOP stack compatibility,

5. Require new casing and cementing integrity tests,

6. Establish new requirements for subsea secondary BOP intervention,

7. Require function testing for subsea secondary BOP intervention,

8. Require documentation for BOP inspections and maintenance,

9. Require a Registered Professional Engineer to certify casing and cementing requirements, and

10. Establish new requirements for specific well control training to include deepwater operations.

As stated, the intent of this interim final rule is to improve safety related to both well bore integrity and well control equipment.

Well bore integrity provides the first line of defense against a blowout by preventing a loss of well control. Well bore integrity includes appropriate use of drilling fluids and the casing and cementing program. Drilling fluids and the casing and cementing program are used to balance the pressure in the borehole against the fluid pressure of the formation, preventing an uncontrolled influx of fluid into the wellbore. The specific provisions in this rule that address well bore integrity are:

1. Incorporating by reference API RP 65—Part 2, Isolating Potential Flow Zones During Well Construction;

2. Submission of certification by a Registered Professional Engineer that the casing and cementing program is appropriate for the purpose for which it is intended under expected wellbore pressure;

3. Requirements for two independent test barriers across each flow path during well completion activities (also certified by a Registered Professional Engineer);

4. Ensuring proper installation of the casing or liner in the subsea wellhead or liner hanger;

5. Approval from the District Manager before displacing kill-weight drilling fluid; and

6. Deepwater well control training for rig personnel.

Well control equipment is the general term for the technologies used to control a well by mechanical means in the event that other well control mechanisms fail. Well control equipment includes control systems that activate the BOPs, either through a control panel on the drilling rig or through Remotely Operated Vehicles (ROVs) that directly interface with the subsea BOP to activate the appropriate rams. The provisions in this rule that address well control equipment include:

1. Submission of documentation and schematics for all control systems;

2. A requirement for independent third party verification that the blind-shear rams are capable of cutting any drill pipe in the hole under maximum anticipated surface pressure (MASP);

3. A requirement for a subsea BOP stack equipped with ROV intervention capability. At a minimum, the ROV must be capable of closing one set of pipe rams, closing one set of blind-shear rams, and unlatching the Lower Marine Riser Package (LMRP);

4. A requirement for maintaining an ROV and having a trained ROV crew on each floating drilling rig on a continuous basis;

5. A requirement for autoshear and deadman systems for dynamically positioned rigs;

6. Establishment of minimum requirements for personnel authorized to operate critical BOP equipment;

7. A requirement for documentation of subsea BOP inspections and maintenance according to API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells;

8. Required testing of all ROV intervention functions on the subsea BOP stack during the stump test and testing at least one set of rams during the initial test on the seafloor;

9. Required function testing of autoshear and deadman systems on the subsea BOP stack during the stump test and testing the deadman system during the initial test on the seafloor; and

10. Required pressure testing if any shear rams are used in an emergency.

The following table shows where recommendations from the Safety Measures Report are implemented in the interim final rule.

Safety measures report recommendation	Interim final rule citation
	Subpart A—General
II.B.3.7: Enforce Tighter Primary Cementing Practices	§ 250.198 Documents incorporated by reference.
	Subpart D—Oil and Gas Drilling Operations
II.B.3.7: Enforce Tighter Primary Cementing Practices	§ 250.415 What must my casing and cementing programs include?
I.A.2: Order BOP Equipment Compatibility Verification for Each Floating Vessel and for Each New Well. I.B.5: Secondary Control System Requirement and Guidelines I.C.7: Develop New Testing Requirements	§ 250.416 What must I include in the diverter and BOP descriptions?
II.B.1.3: New Casing and Cement Design Requirements: Two Independent Barriers. I.C.7: Develop New Testing Requirements	§ 250.418 What additional information must I submit with my APD?
II.B.1.3: New Casing and Cement Design Requirements: Two Independent Barriers.	§ 250.420 What well casing and cementing requirements must I meet?
II.B.1.3: New Casing and Cement Design Requirements: Two Independent Barriers. II.B.2.5: New Casing Installation Procedures II.B.2.6: Develop Additional Requirements or Guidelines for Casing Installation	§ 250.423 What are the requirements for pressure testing casing?
I.B.5: Secondary Control System Requirements and Guidelines I.B.6: New ROV Operating Capabilities II.A.1: Establish Deepwater Well-Control Procedure Guidelines	§ 250.442 What are the requirements for a subsea BOP system?
I.B.5: Secondary Control System Requirements and Guidelines	§ 250.446 What are the BOP maintenance and inspection requirements?
I.B.5: Secondary Control System Requirements and Guidelines I.C.7: Develop New Testing Requirements	§ 250.449 What additional BOP testing requirements must I meet?
I.C.7: Develop New Testing Requirements	§ 250.451 What must I do in certain situations involving BOP equipment or systems?
II.A.2: New Fluid Displacement Procedures	§ 250.456 What safe practices must the drilling fluid program follow?
	Subpart E—Oil and Gas Well-Completion Operations
I.B.5: Secondary Control System Requirements and Guidelines I.B.6: New ROV Operating Capabilities II.A.1: Establish Deepwater Well-Control Procedure Guidelines I.B.5: Secondary Control System Requirements and Guidelines and recommendation. I.C.7: Develop New Testing Requirements	§ 250.515 Blowout prevention equipment.
	Subpart F—Oil and Gas Well-Workover Operations
I.B.5: Secondary Control System Requirements and Guidelines I.B.6: New ROV Operating Capabilities II.A.1: Establish Deepwater Well-Control Procedure Guidelines	§ 250.615 Blowout prevention equipment.
I.B.5: Secondary Control System Requirements and Guidelines and recommendation. I.C.7: Develop New Testing Requirements	§ 250.616 Blowout preventer system testing, records, and drills.
I.B.5: Secondary Control System Requirements and Guidelines and recommendation. I.C.7: Develop New Testing Requirements	§ 250.617 What are my BOP inspection and maintenance requirements?
	Subpart O—Well Control and Production Safety Training
II.A.1: Establish Deepwater Well-Control Procedure Guidelines	§§ 250.1500–250.1510. § 250.1503 What are my general responsibilities for training?
	Subpart Q—Decommissioning Activities
II.B.1.3: New Casing and Cement Design Requirements: Two Independent Tested Barriers.	§ 250.1712 What information must I submit before I permanently plug a well or zone?
II.B.1.3: New Casing and Cement Design Requirements: Two Independent Tested Barriers.	§ 250.1721 If I temporarily abandon a well that I plan to reenter, what must I do?

IV. Source of Specific Provisions Addressed in the Interim Final Rule

This interim final rule clarifies existing regulatory requirements that were addressed by certain portions of NTL No. 2010–N05 by codifying the specific details into regulations. It also addresses items in the Safety Measures Report either identified as appropriate for implementation through emergency rulemaking, or which BOEMRE has determined will significantly increase OCS drilling safety and with which operators can readily comply. The following provides an explanation of each of these sources and provisions.

Emergency Rulemaking Recommendations From Safety Measures Report

The Safety Measures Report identified four items for emergency rulemaking:

1. Develop secondary control system requirements;

2. Establish new blind-shear ram redundancy requirements;

3. Establish new deepwater well control procedure requirements; and

4. Adopt safety case requirements for floating drilling operations on the OCS.

Of these four items, this interim final rule addresses: 1. Secondary control system requirements; and 3. deepwater well control procedure requirements. This interim final rule does not include: 2. New blind-shear ram redundancy requirements; and 4. safety case requirements for floating drilling operations on the OCS.

BOEMRE determined that, while new blind-shear ram redundancy requirements are important to offshore drilling safety, they are not appropriate for inclusion in this interim final rule. Installation of a second set of blind-shear rams will require major modifications to the BOP stack for most rigs on the OCS. Compliance with such a requirement is likely to take operators from 1 year to 18 months. Inclusion of a requirement that will necessitate a period of 1 year or more to comply is not appropriate for an interim final rule, the purpose of which is to have immediate effect. Given the necessary compliance periods, BOEMRE believes there will be sufficient opportunity to proceed through a notice and comment rulemaking. Operators should be aware, however, that BOEMRE intends to promptly initiate a notice and comment rulemaking process to address this issue. Specifically, operators should be aware that BOEMRE is considering regulations to require the installation of a second set of blind-shear rams, appropriately spaced to ensure that at least one blind-shear ram cuts any drill pipe in the hole and seals the wellbore at any time. Operators should also be aware that BOEMRE is likewise considering requiring, through a notice and comment rulemaking, a set of casing shear rams capable of shearing any casing in the hole.

This interim final rule addresses both new well bore integrity requirements and well control equipment requirements. The well bore integrity provisions impose requirements for casing and cementing design and installation, tighter cementing practices, the displacement of kill-weight fluids, and testing of independent well barriers. These new requirements ensure that there are additional physical barriers in the well to prevent oil and gas from escaping into the environment. These new requirements related to well bore integrity will considerably decrease the likelihood of a loss of well control. The well control equipment requirements in this interim final rule will help ensure the BOPs will operate in the event of an emergency and that the ROVs are capable of activating the BOPs. Together, these new requirements will help decrease the urgency of immediately requiring blind-shear ram redundancy on BOPs, and have factored into BOEMRE's decision to address such requirements through a standard rulemaking process.

BOEMRE also determined not to include safety case requirements for floating drilling operations in this interim final rule. A safety case is a comprehensive, structured documentation system to reduce operating risks for offshore drilling. A drilling safety case would establish risk assessment and mitigation processes to manage a drilling contractor's controls related to health, safety, and environmental aspects of operations. BOEMRE is evaluating how a drilling safety case should be most appropriately integrated with an overall Safety and Environmental Management System (SEMS) approach, which BOEMRE may implement through a separate rulemaking process. As directed in the Safety Measures Report, BOEMRE will work with offshore operators and drilling contractors, appropriate government agencies, and other appropriate stakeholders to consider the type of well construction interfacing document that will best connect the requirements of a safety case to existing well design and construction documents. BOEMRE therefore intends to pursue adoption of appropriate safety case requirements through a separate rulemaking process once the necessary analyses have been completed.

Requirements From NTL No. 2010–N05

Of the requirements in this interim final rule, the following table clarifies existing regulations by codifying provisions of NTL No. 2010–N05:

NTL No. 2010–N05 provision	Interim final rule citations
Documentation that the BOP has been maintained according to the regulations at § 250.446(a), maintain these records and make them available upon request (safety report rec. I.A.1).	§ 250.446 What are the BOP maintenance and inspection requirements? § 250.516 Blowout preventer system tests, inspections, and maintenance. § 250.617 What are my BOP inspection and maintenance requirements?
Independent third party verification that the BOP stack is designed for the specific equipment on the rig and compatible with the specific well location, well design, and well execution plan; that the BOP stack has not been compromised or damaged from previous service; and that the BOP stack will operate in the conditions in which it will be used (safety report rec. I.A.2).	§ 250.416 What must I include in the diverter and BOP descriptions?
Secondary control system with ROV intervention capabilities, including the ability to close one set of blind-shear rams and one set of pipe rams and unlatch the LMRP (safety report rec. I.B.5).	§ 250.442 What are the requirements for a subsea BOP system? § 250.515 Blowout prevention equipment. § 250.615 Blowout prevention equipment.
Emergency shut-in system in the event that you lose power to the BOP stack, have an unplanned disconnection of the riser from the BOP stack, or experience another emergency situation (safety report rec. I.B.5).	§ 250.442 What are the requirements for a subsea BOP system? § 250.515 Blowout prevention equipment. § 250.615 Blowout prevention equipment.
Function test the hot stabs that would be used to interface with the ROV intervention panel during the stump test (safety report rec. I.B.6).	§ 250.449 What additional BOP testing requirements must I meet? § 250.516 Blowout preventer system tests, inspections, and maintenance. § 250.616 Blowout preventer system testing, records, and drills.
Independent third party verification that provides sufficient information showing that the blind-shear rams installed in the BOP stack are capable of shearing the drill pipe in the hole under maximum anticipated surface pressures (safety report rec. I.C.7).	§ 250.416 What must I include in the diverter and BOP descriptions?

NTL No. 2010–N05 provision	Interim final rule citations
If the blind-shear rams or casing shear rams are activated in a well control situation in which pipe or casing was sheared, operators must inspect and test the BOP stack and its components, after the situation is fully controlled (safety report rec. I.C.7).	§ 250.451 What must I do in certain situations involving BOP equipment or systems?
Have all well casing designs and cementing program/procedures certified by a Registered Professional Engineer, verifying the casing design is appropriate for the purpose for which it is intended under expected wellbore conditions (safety report rec. II.B.3).	§ 250.420 What well casing and cementing requirements must I meet? § 250.1712 What information must I submit before I permanently plug a well or zone? § 250.1721 If I temporarily abandon a well that I plan to re-enter, what must I do?

Certain measures in NTL No. 2010–N05 are not included in this interim final rule. These are:

1. Verify compliance with existing BOEMRE regulations and with the BOEMRE/U.S. Coast Guard National Safety Alert (safety report rec. III.A.1).

2. Submit BOP and well control system configuration information for a drilling rig that was being used on May 27, 2010 (safety report rec. I.C.8).

3. Operator must submit the relevant information required in NTL No. 2010–N05 prior to commencing operations if the operator had an Application for Permit to Drill (APD) or Application for Permit to Modify (APM) that was previously approved but drilling had not commenced as of May 27, 2010, and operator may not commence drilling without BOEMRE approval (general requirement for NTL not specified in Safety Measures Report).

Other Provisions From the Safety Measures Report in This Interim Final Rule

The following provisions in this interim final rule are not covered in existing NTL No. 2010–N05 but are identified in the Safety Measures Report as being appropriate to implement either immediately or through an emergency rulemaking:

Safety measures report provision	Interim final rule citations
Establish deepwater well control procedure guidelines (safety report rec. II.A.1)	§ 250.442 What are the requirements for a subsea BOP system? § 250.515 Blowout prevention equipment. § 250.615 Blowout prevention equipment. §§ 250.1500 through 250.1510 Subpart O—Well Control and Production Safety Training.
Establish new fluid displacement procedures (safety report rec. II.A.2)	§ 250.456 What safe practices must the drilling fluid program follow?
Develop additional requirements or guidelines for casing installation (safety report rec. II.B.2.6).	§ 250.423 What are the requirements for pressure testing casing?

BOEMRE has also included the following provision in this interim final rule from the Safety Measures Report:

Safety measures report provision	Interim final rule
Enforce tighter primary cementing practices (safety report rec. II.B.3.7)	§ 250.415 What must my casing and cementing programs include?

This provision is recommended in the Safety Measures Report, although it is not specifically identified as requiring implementation immediately or through emergency rulemaking (this provision was also not addressed in NTL No. 2010–N05). BOEMRE has nonetheless determined that it is appropriate for inclusion in this interim final rule because it is consistent with the intent of the recommendations in the Safety Measures Report. Tighter cementing practices will increase the safety of offshore oil and gas drilling operations by improving cementing practices; they also will support the other requirements in this interim final rule.

V. Justification for Interim Final Rulemaking

Pursuant to the Outer Continental Shelf Lands Act (OCSLA), the Secretary has an affirmative obligation to ensure that drilling operations undertaken on the OCS are conducted in a manner that is safe for the human, marine, and coastal environment (43 U.S.C. 1332(6), 1334(a), 1347, and 1348; and 30 CFR 250.106). The April 20, 2010, blowout of the BP Macondo well and the explosion on the Deepwater Horizon killed 11 workers and resulted in the Nation's largest oil spill ever, with substantial environmental and economic impacts.

On May 28, 2010, the Secretary ordered the suspension of certain oil and gas drilling operations in deepwater (greater than 500 feet). On July 12, 2010, the Secretary rescinded that order and replaced it with a new decision ordering the suspension in the Gulf of Mexico (GOM) and Pacific regions of the drilling of wells using subsea BOPs or surface BOPs on a floating facility, with certain exceptions for intervention wells, injection and disposal wells, abandonments, completions, and workovers. This suspension order applies by its terms until November 30, 2010, although the order notes that it could be lifted earlier than that date.

As mentioned previously, on April 30, 2010, the President also directed the Secretary to conduct a thorough review of the Deepwater Horizon event and to report within 30 days on additional

measures needed to improve the safety of oil and gas operations on the OCS. On May 27, 2010, the Secretary delivered the Safety Measures Report to the President. This Safety Measures Report incorporated recommendations from BOEMRE, as well as from a wide range of experts from government, academia, and industry. In developing the Safety Measures Report on which this interim final rule is based, the Department consulted with a wide range of experts in state and Federal government, academic institutions, and industry and advocacy organizations. In addition, draft recommendations were peer reviewed by seven experts identified by the NAE.

Numerous investigations are ongoing, and the precise causes of the well blowout and explosion are not fully known; however, the fact that a blowout occurred clearly indicates problems with the well's line of defense, which could include BOP systems, casing and cementing programs, and fluid displacement procedures. Accordingly, it is not necessary to await certainty regarding the cause of the blowout before promulgating this interim final rule.

Circumstances suggest that, while a blowout and spill of this magnitude have not occurred before on the OCS, it is unlikely that the problems are unique to the Deepwater Horizon and BP's Macondo well. As noted in the July 12, 2010, decision of the Secretary to suspend certain offshore permitting and drilling activities, most BOPs used in drilling on the OCS are of similar design and are produced by a limited number of manufacturers. Furthermore, the BOPs for the relief wells drilled to intercept the Macondo well encountered unexpected performance problems, initially failing to pass new testing procedures developed in response to the Safety Measures Report, including failure of the deadman and autoshear functions. These multiple failures raise red flags as to the reliability of BOPs to adequately safeguard the lives of workers and protect the environment from oil spills in response to a large blowout. They also suggest the need to review regulations pertaining to well casing and design, the other area of likely failure in the Deepwater Horizon event.

Even without the full results of the pending investigations, the obvious failures of well intervention and blowout containment systems demonstrate that previous regulatory assumptions concerning their reliability are inaccurate. The importance of these systems in preventing catastrophic blowouts and oil spills indicate that genuine harm could result from delay and lead BOEMRE to conclude that immediate regulations are needed to better ensure the reliability of these systems, and to protect the lives of workers, human health, and the environment.

This interim final rule therefore, specifically addresses measures that will increase the safety of these systems. It imposes requirements to give greater certainty that casing and cement design and fluid displacement are adequate for well bore integrity, and to enhance the reliability of well control equipment.

The casing and cementing program and fluid displacement procedures are the first line of defense in preventing a loss of well control that could lead to a blowout. Casing and cement and drilling fluids are used to ensure the fluids in a formation do not enter the wellbore during drilling and completion operations. When a well is completed and production begins, the casing and cement continue to prevent uncontrolled flow of fluids into the wellbore. The integrity of the casing and cement are critical to proper well control. While the extent to which cementing and casing failures contributed to the Macondo blowout is not yet fully known, preliminary information suggests that the operator may have failed to follow best industry cementing and casing installation practices. The current regulations contain general cementing and casing requirements, but they do not specifically address best cementing and casing installation practices. This rulemaking will provide greater assurance that all operators will follow these safer practices, reducing the risk of a loss of well control.

This interim final rule also strengthens requirements for BOPs. In the event of a loss of well control, rig operators use the BOPs to regain control of the well. This is done by closing the various rams on the BOP stack, which shut off the flow of formation fluids to the surface. Secondary well control system requirements (*i.e.,* ROV intervention capabilities and emergency back-up BOP control systems) ensure that rig operators are able to activate various BOP rams in the event the control system on the rig fails (*e.g.,* loss of power). Requirements in this interim final rule impose new standards to enhance BOP reliability, thereby lessening the possibility of failures that could lead to an uncontrolled blowout and spill with potentially catastrophic consequences for workers and the environment.

Given the Deepwater Horizon blowout and resulting spill, and because of the potential for grave harm to workers and the human, marine, and coastal environment from any additional events, BOEMRE concludes that existing regulations must be strengthened to more fully protect offshore workers, the environment, and the public, and that this situation justifies immediate imposition of the requirements of this interim final rule.

This interim final rule applies to ongoing operations not covered by the Secretary's July 12, 2010, suspension decision in addition to those operations that were suspended by that decision. Immediate imposition of the requirements of this rule is necessary for both ongoing and suspended operations to ensure that all operations proceed in a more safe and reliable fashion in protection of human health and the environment. The July 12, 2010, suspension expires by its terms on November 30, 2010, and it could be lifted earlier. A standard APA notice and comment rulemaking process would place the effective date of these measures beyond the expiration date of the suspension, which would mean that these operations could resume without the benefit of the new safety measures being in place. Therefore, BOEMRE believes that the delay associated with notice and comment has the potential to harm worker and public health and safety and the environment, and further justifies the immediate implementation of this interim final rule to all OCS drilling operations. To act otherwise has the potential to risk worker and environmental protection with inadequate regulatory coverage.

BOEMRE is cognizant of the fact that the Secretary has the ability to extend the suspension of operations covered by his July 12, 2010, decision, or to apply the suspension to additional operations on the OCS. Immediate application of the safety measures in this interim final rule, however, will improve the reliability of well control systems, thereby allowing all oil and gas operations on the OCS to proceed in a more safe and environmentally sound manner.

BOEMRE believes that much of the oil and gas industry is already well informed of the general provisions in this interim final rule, most of which were identified in the Safety Measures Report. Information gathered by BOEMRE in advance of this rulemaking indicates that BOP equipment manufacturers, drilling contractors, and operators are already working to address the recommendations. Establishing these requirements via an interim final rule will allow these entities to make

informed financial and operational decisions earlier.

As previously noted, these regulations were developed without the benefit of the conclusive findings from the ongoing investigations into the root causes of the explosions and fire on the Deepwater Horizon. In the future, based on the comments we receive on this rule and the additional findings of ongoing investigations, BOEMRE may issue additional regulations or amendments to these regulations that will be intended to further increase the safety of offshore oil and gas operations.

VI. Section-By-Section Discussion of Requirements in the Interim Final Rule

Documents Incorporated by Reference (§ 250.198)

Code of Federal Regulations, Title 30—MINERAL RESOURCES

BOEMRE is revising the title of Chapter II to, "CHAPTER II—BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR." On June 18, 2010, the Secretary of the Interior changed the name of the Minerals Management Service (MMS) to the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). This rule updates the heading of Chapter II in Title 30, Volume 2, of the Code of Federal Regulations to reflect this change.

Paragraph (a)(3) was added to clarify that the documents incorporated by reference into the regulations are requirements. In the National Technology Transfer and Advancement Act of 1995, Congress directed Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies. In § 250.198, BOEMRE incorporates by reference many consensus technical standards including recommended practices, code requirements, and specifications. The effect of incorporating these standards into Federal regulations is confirmed in regulations issued by the Office of the Federal Register (1 CFR 51.9(b)), which requires agencies to inform the user that an incorporated publication is a requirement.

When BOEMRE incorporates a document by reference, any recommendations in the document will be interpreted as requirements, unless otherwise specified. For example, this section incorporates API documents that recommend certain actions using the word *should.* In the Foreword to its recommended practices, API explains that the word *shall* indicates that the recommended practice has universal applicability to the specific activity, while the word *should* denotes a recommended practice where a safe comparable alternative practice is available. Despite this explanation, for API documents incorporated by reference into this part, the terms *should* and *shall* mean *must.* For example, API RP 53, sections 17.10, 17.11, 17.12, 18.10, 18.11, and 18.12, are currently incorporated by reference in § 250.446(a). By adding paragraph (a)(3) to this interim final rule, which explains that the words *should* and *shall* both mean *must,* BOEMRE clarifies to the operators that they *must* follow all of the provisions of these API RP 53 sections.

Paragraph (h)(79) was added to this section and incorporates by reference API RP 65—Part 2, Isolating Potential Flow Zones During Well Construction, First Edition, May 2010. This document contains best practices for zone isolation in wells to prevent annular pressure and/or flow through or past pressure-containment barriers that are installed and verified during well construction. Barriers that seal wellbore and formation pressures or flows may include temporary pressure containment barriers like hydrostatic head pressure during cement curing, and permanent ones such as mechanical seals, shoe formations, and cement. Other well construction (well design, drilling, leak-off tests, etc.,) practices that may affect barrier sealing performance are addressed along with methods to help ensure positive effects or to minimize any negative ones. The incorporation by reference of API RP 65—Part 2 addresses the Safety Measures Report recommendation II.B.3.7: Enforce Tighter Primary Cementing Practices.

The citations for API RP 53 in § 250.198(h)(63) were updated to include the requirements in § 250.516 and new § 250.617.

A consensus standard indicates acceptance and recognition across the industry that this technology is feasible. For example, in its recommended practice publications, including API RP 65—Part 2 and API RP 53, API explains that its publications are intended to facilitate the broad availability of proven, sound engineering, and operating practices. The recommended practices are created with input from oil and gas operators, drilling contractors, service companies, consultants, and regulators; therefore, the recommended practices reflect an agreement that the specified practices and technologies are available and appropriate. Even though the development of a standard does not represent a 100% agreement by the task group members, the process provides a means for industry and regulatory bodies to develop protocols for the highly specialized equipment and procedures used in offshore oil and gas work. BOEMRE would not have the proper resources to develop information included in standards on its own (*e.g.* deepwater, High Pressure, High Temperature). BOEMRE regulatory program benefits from using the expertise in industry on offshore operations through the standards development process. Furthermore, in the National Technology Transfer and Advancement Act of 1995, Congress directed Federal agencies to use technical standards that are developed or adopted by voluntary consensus standards bodies (*http://standards.gov/standards_gov/nttaa.cfm*).

When a copyrighted technical industry standard is incorporated by reference into our regulations, BOEMRE is obligated to observe and protect that copyright. BOEMRE provides members of the public with Web site addresses where these standards may be accessed for viewing—sometimes for free and sometimes for a fee. The decision to charge a fee is decided by organizations developing the standard.

For the convenience of the viewing public who may not wish to purchase these documents, they may be inspected at the Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, Room 3313, Herndon, Virginia 20170; phone: 703–787–1587; or at the National Archives and Records Administration. For information on the availability of this material, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

These documents will continue to be made available to the public for viewing when requested. Specific information on where these documents can be inspected or purchased can be found at § 250.198, Documents incorporated by reference.

In addition, the API has decided to provide free online public access to 160 key industry standards, including a broad range of safety standards once changes to the API website are complete. The standards represent almost one-third of all API standards and will include all that are safety-related or have been incorporated into Federal regulations. The API will make these standards will be available online for review and hardcopies and printable versions will continue to be available for purchase. You may view or purchase

these API documents at: *http://www.api.org/*.

What must my casing and cementing programs include? (§ 250.415)

In this section, BOEMRE added a new paragraph (f) requiring the operator to include in its APD an evaluation of the best practices identified in API RP 65—Part 2, Isolating Potential Flow Zones During Well Construction. We revised paragraphs (c), (d), and (e) to accommodate the new paragraph. Incorporating this document by reference will help ensure operators use best practices when designing their casing and cementing programs and will help ensure the integrity of the well, decreasing the risk of a loss of well control. Operators must submit a written description of their evaluation to BOEMRE that includes the mechanical barriers and cementing practices the operators will use for each casing string. Operators must exercise due diligence in understanding the variables involved when planning the casing and cementing program.

The API RP 65—Part 2 addresses mechanical barriers in section 3. A mechanical barrier, as defined by this document, is a verifiable seal achieved by mechanical means between two casing strings or a casing string and the borehole that isolates all potential flowing zones at or below the wellhead, BOP, or diverter. The use of downhole mechanical barriers is complementary to properly executed cementing and not a replacement. The applications of subsurface mechanical barriers must be chosen with care.

The API RP 65—Part 2, section 4, addresses cementing practices and factors affecting cementing. This section requires that casing and cementing programs address many of the key drilling issues that affect the quality of a primary cementing operation. Section 4 includes the best practices for the factors that must be considered and addresses the interrelationship between drilling operations and cementing success. BOEMRE is requiring operators to document how they evaluated these best practices, to ensure operators consider them while developing their casing and cementing programs.

BOEMRE believes that this is an appropriate document to incorporate by reference. The key to successful use of this document for OCS cementing operations is implementation. The regulations will require that the operator address the document during the preparation of the APD and describe the cementing practices and barriers used for casing string. Including this information on the APD will help assure best practices are used for a particular operation. Incorporating this document will not address all issues associated with cementing practices; however, doing so gives the agency the ability to evaluate best cementing practices on a case by case basis. Additional cementing requirements may be identified as results of the many investigations of the Deepwater Horizon event but until then BOEMRE believes this is the best approach to requiring best cementing practices. These additions will allow BOEMRE to confirm that well construction is based on a complete evaluation of all critical factors (including mechanical barriers and cementing practices) involved in a casing and cementing program. This new requirement addresses Safety Measures Report recommendation II.B.3.7: Enforce Tighter Primary Cementing Practices.

What must I include in the diverter and BOP descriptions? (§ 250.416)

In this section, paragraph (d) was revised to include the submission of a schematic of all control systems, including primary control systems, secondary control systems, and pods for the BOP system. This requirement applies to both surface and subsea BOP systems. This will provide documentation for all control systems to BOEMRE. The location of the controls must be included. Secondary control systems include, but are not limited to, the following: ROV intervention panels located on the BOP, autoshear and deadman systems, power sources of each system, back up power sources, and acoustic systems.

In this section, paragraph (e) was revised to require the operator to submit independent third party verification and supporting documentation that shows the blind-shear rams installed in the BOP stack are capable of shearing any drill pipe in the hole under maximum anticipated surface pressure, as recommended in the Safety Measures Report and included in NTL No. 2010–N05. This requirement applies to both surface and subsea BOP systems. The benefit of an independent third party is that it provides an objective and technically-informed review to properly verify capabilities of the blind-shear rams. Requiring independent third party verification and information about the blind-shear rams will help ensure that the appropriate shear rams are installed in the BOP. The documentation must include test results and calculations of shearing capacity of all pipe to be used in the well including correction for maximum anticipated surface pressure. Shearing capability tests can be performed on the drill pipe that requires the highest shear pressure. The operator must include a discussion on how the drill pipe used during the shear test required the highest shear pressure and was the most difficult to shear. The interim final rule will codify the section, "Verification that Blind-shear Rams Will Shear Pipe in the Hole" in NTL No. 2010–N05.

Paragraph (f) was added to require independent third party verification that a subsea BOP stack is designed for the specific equipment used on the rig. The independent third party must verify that the subsea BOP stack is compatible with the specific well location, well design, and well execution plan. Information showing that the shear rams are appropriate for the project must be included. The independent third party must also verify that the subsea BOP stack has not been damaged or compromised from previous service. Last, the independent third party must verify that a subsea BOP stack will operate in the conditions in which it will be used. This will ensure that all factors of drilling with subsea BOPs are considered when choosing well control equipment. This requirement applies to all APDs that request to use a subsea BOP stack. It applies to completion, workover, or abandonment operations. The interim final rule will codify the section, "BOP Compatibility Verification for All Wells" in NTL No. 2010–N05.

Paragraph (g) was added and describes the criteria and documentation for an independent third party that must be submitted with the APD to BOEMRE for review. This is to ensure that the independent third party is capable of providing both an objective and a technically informed validation of the subjects being reviewed. The independent third party must be a technical classification society; an API licensed manufacturing, inspection, certification firm; or licensed professional engineering firm capable of providing the verifications required under this part. The independent third party must not be the original equipment manufacturer. The original equipment manufacturer is excluded because it has a financial interest in equipment being evaluated. Equipment manufacturers that do not have a financial interest in the equipment being evaluated may serve as an independent third party certifier if otherwise qualified. The operator must provide evidence to BOEMRE that the firm it is using is reputable; specifically, the firm or its employees hold appropriate licenses to perform the verification in the appropriate jurisdiction, the firm carries industry-

standard levels of professional liability insurance, and the firm has no record of violations of applicable law. Prior to any shearing ram tests or inspections, the operator must also notify the District Manager 24 hours in advance. The operator must ensure an official representative of BOEMRE access to the location to potentially witness any testing or inspections, or to verify information submitted to BOEMRE. This approach to document the qualifications of the independent third party is the same approach being followed for the documenting the independent third party required by NTL No. 2010–N05.

The revised requirements in paragraph (d) address Safety Measures Report recommendation I.B.5: Secondary Control System Requirements and Guidelines. The requirements in paragraph (e) address Safety Measures Report recommendation I.C.7: Develop New Testing Requirements. The new requirements in paragraph (f) address Safety Measures Report recommendation I.A.2: Order BOP Equipment Compatibility Verification for Each Floating Vessel and for Each New Well. The criteria required for the independent third party are also addressed in NTL No. 2010–N05. These requirements will help ensure that the rig operator has the appropriate control systems in place, aiding the rig operator's ability to regain control of a well in the event of a loss of well control.

What additional information must I submit with my APD? (§ 250.418)

In this section, new paragraph (h) was added that requires the operator to submit certifications of their casing and cementing program signed by a Registered Professional Engineer. The Registered Professional Engineer must be registered in a State in the United States but does not have to be a specific discipline. Certification by a Registered Professional Engineer will increase the likelihood that the casing and cementing program has been properly designed and implemented, and will provide adequate well control. The Registered Professional Engineer will certify that there will be at least two independent tested barriers across each flow path during well completion activities. The Registered Professional Engineer will also certify that the casing and cementing design is appropriate for the purpose for which it is intended under expected wellbore conditions. The operator must submit this certification to BOEMRE along with the APD. Paragraph (g) was revised to accommodate new paragraph (h). The interim final rule will codify requirements addressed under the section, "Well Design and Construction for All Wells" in NTL No. 2010–N05. These requirements for additional barriers, and the certification of the cement design, will decrease the likelihood of a blowout. These requirements apply to new wells, sidetracks, bypasses, or deepened wells.

In this section, a new paragraph (i) was added requiring the operator to submit a description of qualifications of any independent third party. Operators must formally notify BOEMRE of their independent third parties. The description must be submitted with the APD and may include the following:

1. Name and address of the individual or organization;

2. Size and type of the organization or corporation;

3. Previous experience as a Certified Entity, Certified Verification Agent (CVA), or similar third-party representative;

4. Experience in design, fabrication, or installation of BOPs and related equipment;

5. Technical capabilities (including professional certifications and organizational memberships) of the third party or the primary staff to be associated with the certifying functions for the specific project;

6. In-house availability of, or access to, appropriate technology (i.e., computer modeling programs and hardware, testing materials, and equipment);

7. Ability to perform and effectively manage certifying functions, inspections, and tests for the specific project considering current resource availability;

8. Previous experience with regulatory requirements and procedures;

9. Evidence that the third party is not owned or controlled by the designer, manufacturer, or supplier of the system or its subsystems to be inspected or tested under regulations applicable to this device or any manufacturer of similar equipment or material;

10. The level of work to be performed by the third party; and

11. A list of documents and certifications expected to be furnished to BOEMRE by the third party.

The new requirements address the Safety Measures Report recommendation II.B.1.3: New Casing and Cement Design Requirements: Two Independent Tested Barriers and recommendation I.C.7: Develop New Testing Requirements.

What well casing and cementing requirements must I meet? (§ 250.420)

In this section, new paragraph (a)(6) was added that requires the operators to submit certification of their casing and cementing program signed by a Registered Professional Engineer (see discussion under section 250.418, above). The Registered Professional Engineer must be registered in a State in the United States. As mentioned previously, the Registered Professional Engineer does not have to be from a specific discipline, but must be capable of reviewing and certifying that the casing design is appropriate for the purpose for which it is intended under expected wellbore conditions. The Registered Professional Engineer will certify that there will be at least two independent tested barriers, including one mechanical barrier, across each flow path during well completion activities. The Registered Professional Engineer will also certify the casing and cementing design is appropriate for the purpose for which it is intended under expected wellbore conditions. The operator must submit this certification to BOEMRE along with the APD. The operator should not deviate from the certified procedure; if the operator deviates from the certified procedures, they must contact the appropriate District Manager. Paragraphs (a)(4) and (a)(5) were revised to accommodate the new paragraph (a)(6). The interim final rule will codify the section, "Well Design and Construction for All Wells" in NTL No. 2010–N05. The certification of the casing and cementing program will help ensure that the appropriate program is used for the well and decrease the likelihood of a blowout.

A new paragraph (b)(3) was also added, requiring the operator to install dual mechanical barriers in addition to cement for the final casing string (or liner if it is the final string), to prevent flow in the event of a failure in the cement. These may include dual float valves, or one float valve and a mechanical barrier. The operator must document the installation of the dual mechanical barriers and submit this documentation to BOEMRE 30 days after installation. References to days in this rule are always in calendar days. The interim final rule will codify the section, "Well Design and Construction for All Wells" in NTL No. 2010–N05.

These new requirements will help ensure that the best casing and cementing design will be used for a specific well. The new requirements in paragraphs (a)(6) and (b)(3) address the Safety Measures Report recommendation II.B.1.3: New Casing

and Cement Design Requirements: Two Independent Tested Barriers.

What are the requirements for pressure testing casing? (§ 250.423)

This section was reorganized to accommodate new requirements: the current regulations were redesignated as paragraph (a) and new paragraphs (b) and (c) were added. Paragraph (b) requires the operator to perform a pressure test on the casing seal assembly to ensure proper installation of casing or liner in the subsea wellhead or liner hanger. This must be done for intermediate and production casing strings or liner. To install casing in the subsea wellhead, the operator runs and lands the casing hanger tool, cements the casing, latches the casing hanger in place, and finally pressure sets and tests the seal. This test ensures that the casing hanger latching mechanism, or lockdown mechanism, is engaged, ensuring the integrity of the casing. The operator must submit the test procedures and criteria used for a successful test with the APD to BOEMRE for approval. The operator must record the test results and make the results available to BOEMRE upon request. As required in § 250.466, records for well operations must be kept onsite while drilling activities continue. The interim final rule will codify requirements addressed under the section, "Well Design and Construction for All Wells" in NTL No. 2010–N05.

Paragraph (c) requires the operator to perform a negative pressure test on all wells to ensure proper installation of casing for the intermediate and production casing strings. The operator must submit the procedures and criteria for a successful test with the APD for approval. The operator must record the test results and make available to BOEMRE upon request. A negative pressure test will help ensure that the casing, along with the cement, provides a seal.

The new requirements in this section will help ensure proper casing installation and evaluate the integrity of the casing and cement. The new requirements in this section address the Safety Measures Report recommendations II.B.1.3: New Casing and Cement Design Requirements: Two Independent Tested Barriers; II.B.2.5: New Casing Installation Procedures; and II.B.2.6: Develop Additional Requirements or Guidelines for Casing Installation.

What are the requirements for a subsea BOP system? (§ 250.442)

This section requires that when drilling with a subsea BOP system, the BOP system must be installed before drilling below the surface casing. The table in this section outlines the requirements, including:

a. The minimum number of each type of BOP,
b. dual-pod control systems,
c. accumulator operations,
d. ROV intervention,
e. maintaining an ROV and ROV crew training,
f. autoshear and deadman capability and optional acoustic system for dynamically positioned rigs,
g. accidental disconnect avoidance,
h. BOP control panel labels,
i. BOP management system,
j. personnel training for BOP equipment,
k. marine riser removal, and
l. avoiding ice scour.

Paragraph (a) was revised to clarify that the blind-shear rams must be capable of shearing any drill pipe in the hole under maximum anticipated surface pressures. When drilling with a subsea BOP stack, the operator must have a minimum of four remote controlled hydraulically operated BOPs. The BOPs must include one annular preventer, two sets of pipe rams, and one set of blind-shear rams.

The requirement in paragraph (b) to have an operable dual-pod control system and the requirement in paragraph (c) to follow API RP 53, Section 13.3, Accumulator Volumetric Capacity, were not revised. The operator must meet the volume capacities for all subsea accumulators and must meet the closing times specified in API RP 53, Section 13.3.5, Accumulator Response Time: The BOP control system must be capable of closing each ram BOP in 45 seconds or less; closing time must not exceed 60 seconds for annular BOPs; operating response time for choke and kill valves must not exceed the minimum observed ram BOP close response time; and time to unlatch the LMRP must not exceed 45 seconds.

Requirements related to ROV intervention in paragraph (d) were added. The subsea BOP stack must be equipped with ROV intervention capability to operate one set of pipe rams and one set of blind-shear rams as well as unlatch the LMRP. The BOP–ROV interface must allow sufficient volume to actuate all required functions. This requirement will ensure that the dedicated ROV has the capacity to close the BOP functions and secure the well in sufficient time during a well control event. The interim final rule will codify the section, "ROV Hot Stab Function Testing of the ROV Intervention Panel" in NTL No. 2010–N05.

In paragraph (e), the operator is required to maintain an ROV and have a trained ROV crew on each floating drilling rig on a continuous basis. The crew must be trained in the operation of the ROV. The training must include simulator training on stabbing into an ROV intervention panel on a subsea BOP stack. This requirement will help provide assurance that a properly trained crew is available for use during an emergency situation.

Requirements related to autoshear and deadman systems in paragraph (f) were added. Autoshear, deadman, and acoustic systems are all emergency systems. Dynamically positioned rigs must have autoshear and deadman systems. Autoshear system is defined as a safety system that is designed to automatically shut in the wellbore in the event of an unplanned disconnect of the LMRP. When the autoshear is armed, a disconnect of the LMRP closes the shear rams. Deadman system is defined as a safety system that is designed to automatically close the wellbore in the event of a simultaneous absence of hydraulic supply and signal transmission capacity in both subsea control pods. Both autoshear and deadman are considered "rapid discharge" systems. Dynamically positioned rigs may also use an acoustic system. An acoustic signal transmission may be used as an emergency backup that controls critical BOP functions. However, BOEMRE believes additional evaluation is necessary to determine the reliability of acoustic signal transmission as a mandatory backup control system. Industry, academics and other stakeholders have raised concerns about how the differences in water temperatures between water layers (deepwater thermocline) will affect the transmission of the acoustic signal to the BOP stack when installed in deepwater. Similar concerns were raised about how different salinities between water layers, noise from a wild well, or other subsea noise may interfere with the successful transmission of the acoustic signals to the BOP stack. Further investigation of these concerns is needed before deciding to require the installation of an acoustic backup control system. The interim final rule will codify the section, "Secondary Control System Requirements and Guidelines for Subsea BOP Stacks" in NTL No. 2010–N05.

In paragraph (g), the operator is required to have operational or physical barrier(s) on BOP control panels to prevent accidental use of disconnect functions. The operator must incorporate enable buttons on control panels to ensure two-handed operation for all critical functions. The new requirements in this paragraph will

reduce the chances of an accidental disconnect by requiring two separate actions to activate all critical functions.

In paragraph (h), the operator is required to clearly label all control panels for the subsea BOP system. The operator must include all BOP controls such as hydraulic control panels and ROV interface on the BOP. The new requirements in this paragraph will help to ensure that the correct function is executed. The labeling of all functions will also assist in proper usage in an emergency situation.

In paragraph (i), the operator is required to develop and use a management system for operating the BOP system. This includes guidance to prevent accidental or unplanned disconnects of the system. This management system must include written procedures for operating the BOP stack and LMRP, and minimum knowledge requirements for personnel authorized to operate and maintain BOP components. A copy of these written procedures should be maintained on the drilling rig and in other readily accessible locations. These procedures must be made available to all relevant personnel. The new requirements in this paragraph will help to ensure that the correct function is executed in an emergency situation.

Paragraph (j) requires the operator to establish minimum requirements for personnel authorized to operate critical BOP equipment. This training must include deepwater well control theory and practice in accordance with 30 CFR part 250, subpart O, and a comprehensive knowledge of BOP hardware and control systems.

Paragraphs (k) and (l) are currently required, but were reformatted into the table. Paragraph (k) requires the operator to displace the fluid in the riser with seawater before removing the marine riser; while conducting this operation, the operator must maintain sufficient hydrostatic pressure on the well or take other suitable precautions to compensate for the reduction in pressure to maintain well control. Paragraph (l) requires that when drilling in an ice-scour area, the BOP stack must be installed in a glory hole (a depression deep enough that the equipment is protected).

These requirements help ensure enhanced operability of subsea BOP systems. These requirements will also help to ensure that the proper personnel are trained to have a comprehensive knowledge of well control equipment, maintain well control equipment, operate essential well control equipment, and manage a well control situation.

The ROV intervention capability and autoshear and deadman requirements in this section address Safety Measures Report recommendation I.B.5: Secondary Control System Requirements and Guidelines, and recommendation I.B.6: New ROV Operating Capabilities. The new requirements also meet Safety Measures Report recommendation II.A.1: Establish Deepwater Well-Control Procedure Guidelines.

What are the BOP maintenance and inspection requirements? (§ 250.446)

Paragraph (a) of this section was changed to require the operator to document the maintenance and inspections of their BOP system. The requirement that BOP maintenance and inspections must meet or exceed the provisions of Sections 17.10 and 18.10, Inspections; Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management; described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198) was not changed. The operator must document the procedures used, record the results, and make the results available to BOEMRE upon request. The operator must maintain the records on the rig for 2 years or from the date of the last major inspection, whichever is longer.

The BOP maintenance, inspections, and quality management are essential components to ensuring BOP integrity and operability. According to API RP 53, Section 17.10 (surface BOPs) and Section 18.10 (subsea BOPs), operators must perform a between-well inspection, a visual inspection of flexible choke and kill lines, and a major 3–5 year inspection. According to API RP 53, Section 17.11 (surface BOPs) and Section 18.11 (subsea BOPs), operators are required to maintain BOP manuals, connections, replacement parts, torque requirements, equipment storage, lubricants and hydraulic fluids, weld repairs, and mud/gas separators. According to API RP 53, Section 17.12 (surface BOPs) and Section 18.12 (subsea BOPs), operators are required to have a planned maintenance system, with equipment identified, tasks specified, and the time intervals between tasks stated. Records of maintenance performed and repairs made must be retained on file at the rig site or readily available.

The interim final rule will codify the section, "BOP Inspection, Maintenance, and Repair for All Wells" in NTL No. 2010–N05. The documentation for BOP maintenance, repairs, and inspections meet the Safety Measures Report recommendation I.B.5: Secondary Control System Requirements and Guidelines.

What additional BOP testing requirements must I meet? (§ 250.449)

New paragraphs (j) and (k) were added and paragraphs (h) and (i) were revised to accommodate the new paragraphs. New paragraph (j) requires the testing of ROV intervention functions on a subsea BOP stack. The ROV intervention functions must be tested during the stump test. This test must include ensuring that the hot stabs are function tested and are capable of actuating one set of pipe rams and one set of blind-shear rams, as well as unlatching the LMRP. The operator must also test at least one set of rams during the initial test on the seafloor. The BOP–ROV interface must allow sufficient volume to actuate all required functions. The operator must document the test results and make them available to BOEMRE upon request. This will help to ensure that the ROV and hot stabs are capable of actuating the BOP rams and LMRP disconnect. The interim final rule will codify requirements addressed under the section, "ROV Hot Stab Function Testing of the ROV Intervention Panel" in NTL No. 2010–N05; which required testing of ROV intervention functions during the stump test. The interim final rule will also require function testing during the initial test on the seafloor. A successful test will help ensure that the ROV and BOP are capable of operating as designed under conditions at water depth.

New paragraph (k) requires function testing of the autoshear and deadman systems on the BOP stack during the stump test. The operator must submit the testing procedures for these requirements with the APD or APM for BOEMRE approval. This should include the sequence of BOP functions that will activate when the autoshear and deadman systems are triggered. These requirements will help to ensure that a well is secured in an emergency situation, loss of power, or accidental disconnect, preventing the possible loss of well control. The ROV intervention capability and autoshear and deadman requirements in this section address Safety Measures Report recommendation I.B.5: Secondary Control System Requirements and Guidelines and recommendation I.C.7: Develop New Testing Requirements.

What must I do in certain situations involving BOP equipment or systems? (§ 250.451)

A new item was added to the table, requiring the operator to perform a full pressure test when the blind-shear rams or casing shear rams are used in an emergency. Following activation of the blind-shear rams or casing shear rams, in which pipe or casing is sheared during a well control situation, the operator must retrieve and physically inspect the BOP and conduct a full pressure test of the BOP stack, after the situation is fully controlled. This will help ensure the integrity of the BOP and that the BOP will fully function and hold pressure after the event. If rams, sealing elements, or other equipment are damaged, they must be replaced or repaired.

The interim final rule will codify the section, "BOP Inspection Testing after Well Control Event for All Wells" in NTL No. 2010–N05. The tests required after a well control event in this section addresses Safety Measures Report recommendation I.C.7: Develop New Testing Requirements.

What safe practices must the drilling fluid program follow? (§ 250.456)

A new paragraph (j) was added, the current (j) was redesignated to paragraph (k) and paragraph (i) was revised to accommodate the new paragraph. The new paragraph (j) requires approval from the District Manager before displacing kill-weight drilling fluid from the wellbore. The operator must submit with the APD or APM the reasons for displacing the kill-weight drilling fluid and provide detailed step-by-step written procedures describing how the operator will safely displace these fluids. The step-by-step displacement procedures must address the following:

1. Number and type of independent barriers that are in place for each flow path;

2. Tests to ensure integrity of independent barriers;

3. BOP procedures used while displacing kill weight fluids; and

4. Procedures to monitor fluids entering and leaving the wellbore.

These new requirements better ensure that well control is not compromised when displacing kill-weight fluid out of the wellbore. The requirement to submit procedures for kill-weight drilling fluid displacement in this section addresses Safety Measures Report recommendation II.A.2: New Fluid Displacement Procedures.

Blowout prevention equipment. (§ 250.515)

This section added requirements of § 250.442 in subpart D, Oil and Gas Drilling Operations, to the requirements for well completion operations using a subsea BOP stack.

Blowout preventer system tests, inspections, and maintenance. (§ 250.516)

Paragraph (d)(8) was added to require tests for ROV intervention functions during the stump test. Paragraph (d)(9) was added to require a function test of the autoshear and deadman system. Paragraph (d)(6) was revised to accommodate the new paragraphs. This section adds the requirements of § 250.449 in subpart D, Oil and Gas Drilling Operations, to the requirements for well completion operations using a subsea BOP stack. The interim final rule will require successful testing of both systems during the stump test. Successful tests will ensure the autoshear and deadman system are operating as designed. A function test of the deadman system is also required during the initial test on the seafloor. Successful testing the deadman system during the initial test on the seafloor will ensure the system is capable of operating as designed under conditions at water depth.

Paragraphs (g) and (h) were revised to expand and clarify the requirements for inspections and maintenance. The BOP maintenance, inspections, and quality management are essential to BOP operability. This section adds requirements of § 250.446 in subpart D, Oil and Gas Drilling Operations, to the requirements for well completion operations using a subsea BOP stack. The operator must maintain the records on the rig for 2 years or from the date of the last major inspection, whichever is longer.

The documentation for BOP maintenance, repairs, and inspections meets the Safety Measures Report recommendation I.B.5: Secondary Control System Requirements and Guidelines and recommendation I.C.7: Develop New Testing Requirements.

Blowout prevention equipment. (§ 250.615)

This section added requirements of § 250.442 in subpart D, Oil and Gas Drilling Operations, to the requirements for well workover operations using a subsea BOP stack.

Blowout preventer system testing, records, and drills. (§ 250.616)

Paragraph (h)(1) was added to require tests for ROV intervention functions during the stump test. Paragraph (h)(2) was added to require a function test of the autoshear and deadman systems. Paragraph (h)(3) was added to require the use of water to stump test a subsea BOP system. This section adds the requirements of § 250.449 in subpart D, Oil and Gas Drilling Operations, to the requirements for well workover operations using a subsea BOP stack. The interim final rule will require testing of both systems during the stump test. Successful tests will ensure the autoshear and deadman systems are operating as designed. A function test of the deadman system is also required during the initial test on the seafloor. Testing the deadman system during the initial test on the seafloor will help ensure the system is capable of operating as designed under conditions at water depth.

What are my BOP inspection and maintenance requirements? (§ 250.617)

This section was added to apply the requirements of § 250.446 in subpart D, Oil and Gas Drilling Operations, to the requirements for well workover operations using a subsea BOP stack.

Definitions. (§ 250.1500)

BOEMRE revised the definition of *well control* by creating separate definitions for the terms *well servicing* and *well completion/well workover.*

A new definition for *deepwater well control* was added. The rule adds deepwater well control throughout subpart O as one of the subjects for employee and contract personnel training. This clarification helps ensure that rig personnel are trained in deepwater well control and the specific duties, equipment, and techniques associated with deepwater drilling.

What are my general responsibilities for training? (§ 250.1503)

In this section, new paragraph (b) was added and current paragraphs (b) and (c) were redesignated as (c) and (d). The operator is required to ensure that employees and contract personnel are trained in deepwater well control when conducting operations with a subsea BOP stack. They must have a comprehensive knowledge of deepwater well control equipment, practices, and theory. This clarification of existing requirements addresses Safety Measures Report recommendation II.A.1: Establish Deepwater Well-Control Procedure Guidelines.

What information must I submit before I permanently plug a well or zone? (§ 250.1712)

In this section, new paragraph (g) was added and paragraphs (e) and (f)(14) were revised to accommodate the new paragraph. New paragraph (g) requires operators to submit certification by a Registered Professional Engineer of the well abandonment design and procedures. The Registered Professional Engineer must be registered in a State in the United States. The Registered Professional Engineer does not have to be a specific discipline, but must be capable of reviewing and certifying that the casing design is appropriate for the purpose for which it is intended under expected wellbore conditions. The Registered Professional Engineer will certify that there will be at least two independent tested barriers, including one mechanical barrier, across each flow path during well abandonment activities. The Registered Professional Engineer will also certify that the plug meets the requirements in the table in § 250.1715. This will help ensure the integrity of the well. The operator must submit this certification along with the APM. The operator should not deviate from the certified procedure; if the operator deviates from the certified procedures, they must contact the appropriate District Manager. The interim final rule will codify the section, "Well Design and Construction for All Wells" in NTL No. 2010–N05. This new requirement addresses Safety Measures Report recommendation II.B.1.3: New Casing and Cement Design Requirements: Two Independent Tested Barriers.

If I temporarily abandon a well that I plan to re-enter, what must I do? (§ 250.1721)

In this section, new paragraph (h) was added to require operators to submit certification by a Registered Professional Engineer of the well abandonment design and procedures. The Registered Professional Engineer does not have to be a specific discipline. The Registered Professional Engineer must be registered in a State in the United States. As mentioned previously, the Registered Professional Engineer does not have to be a specific discipline, but must be capable of reviewing and certifying that the casing design is appropriate for the purpose for which it is intended under expected wellbore conditions. The Registered Professional Engineer will certify that there will be at least two independent tested barriers, including one mechanical barrier, across each flow path during well abandonment activities. This will help ensure the integrity of the well. The operator must submit this certification to BOEMRE along with the APM, as required in § 250.1712 and is responsible for ensuring that the approved well abandonment design and procedures are followed. The operator should not deviate from the certified procedure, if the operator deviates from the certified procedures they must contact the appropriate District Manager. Paragraphs (e) and (g)(3) were revised to accommodate the new paragraph. The interim final rule will codify requirements addressed under the section, "Well Design and Construction for All Wells" in NTL No. 2010–N05. This new requirement addresses Safety Measures Report recommendation II.B.1.3: New Casing and Cement Design Requirements: Two Independent Tested Barriers.

VII. Additional Recommendations in the Safety Measures Report Not Covered in This Interim Final Rule

As discussed previously, this interim final rule incorporates some, but not all items from the Safety Measures Report. The following tables specifically identify which measures from the Safety Measures Report are not covered in the interim final rule. BOEMRE anticipates it will be able to address these measures in notice and comment rulemakings in the future.

Items in the Safety Measures Report that are not covered in this interim final rule, and which BOEMRE anticipates addressing either in the near future, or at a later time after further review and analysis, are as follows:

ITEMS FOR FUTURE RULEMAKING

Number	Recommendation
I.A.3	Develop Formal Equipment Certification Requirements.
I.B.4	New Blind Shear Ram Redundancy Requirement.
II.B.3.8	Develop Additional Requirements or Guidelines for Evaluation of Cement Integrity.
II.C.9	Increase Federal Government Wild-Well Intervention Capabilities.
II.C.10	Study Innovative Wild-Well Intervention, Response Techniques, and Response Planning.
III.C.2	Adopt Safety Case Requirements for Floating Drilling Operations on the OCS.
III.C.4	Study Additional Safety Training and Certification Requirements.

There are also certain items which, although they are included in this interim final rule, BOEMRE anticipates expanding upon in the future. BOEMRE is specifically considering additional rulemaking activity concerning the following:

ITEMS INCLUDED IN THIS RULE UNDER CONSIDERATION FOR EXPANSION

Number	Recommendation
I.B.5	Secondary Control System Requirements and Guidelines.
I.B.6	New ROV Operating Capabilities.
II.A.1	Establish Deepwater Well-Control Procedure Guidelines.
II.B.1.4	Study Formal Personnel Training Requirements for Casing and Cementing Operations.
II.B.2.6	Develop Additional Requirements or Guidelines for Casing Installation.
II.B.3.7	Enforce Tighter Primary Cementing Practices.

Additionally, as discussed further, BOEMRE is examining a variety of other well control issues related to OCS drilling to determine how to improve future safety on the OCS in light of the Deepwater Horizon event.

BOEMRE recognizes that this interim final rule does not fully address all issues associated with OCS drilling operations, although it is a critical step. We anticipate future rulemakings as we learn more about the causes of the Deepwater Horizon event and other issues associated with deepwater drilling operations. Future rulemakings will be based on recommendations in the Safety Measures Report that require further development, the results of the joint USCG–BOEMRE investigation, other investigations and inquiries, and findings from technology-focused research led by DOI strike teams and interagency workgroups. Some of the issues that are addressed by this rulemaking, such as cementing and casing design, will be considered for additional rulemaking in the future. We will consider additional measures, after we have more thoroughly studied these issues and assessed the best approaches.

BOEMRE has identified the following issues as likely topics for both near-term and future rulemakings:

Well Control Issues

While the content of these future rulemakings will depend in part on the findings of the various investigations, BOEMRE anticipates that future rules will focus on well control issues. More specifically this will include:

1. Cementing and casing—BOEMRE anticipates examining the need for additional cement evaluation

procedures and training needs for personnel involved in cementing and casing operations, and intends to incorporate findings as appropriate from the investigations related to the Deepwater Horizon event.

2. Fluid displacement—BOEMRE intends to further evaluate the effectiveness of new fluid displacement requirements to determine if it needs to establish different or enhanced fluid displacement procedures.

3. BOPs—BOEMRE anticipates rulemaking to address BOP recommendations resulting from the joint BOEMRE and United States Coast Guard investigation of the Deepwater Horizon event. Rulemaking will also likely address the requirement to have two sets of blind shear rams as recommended in the Safety Measures Report and discussed previously. Rulemakings will also likely consider requirements for casing shear rams, minimum number of pipe rams, second annular preventer for subsea BOP stacks, and electronic BOP logs. Another area mentioned in the Safety Measures Report is the need for periodic certification of the BOP stack or specific BOP components. BOEMRE wishes to undertake additional research on how these certifications should be done and how often they should occur.

4. Secondary control systems and ROVs—Future rulemaking may address autoshear and deadman requirements for all rigs with subsea BOP stacks, enhanced ROV intervention capability, and subsea accumulator volumes to ensure fast closure of BOPs and choke and kill lines. The need for effective tertiary control systems, such as an acoustic system, will also be examined and addressed as appropriate.

5. Wild-well intervention techniques—BOEMRE will conduct research on this topic and evaluate the progress industry has made to establish deepwater wild-well intervention as it moves forward with rulemaking on wild well intervention.

6. Industry training—BOEMRE will investigate safety training requirements for deepwater drilling operations and determine the appropriate manner to regulate the training of personnel.

7. Oil spill response—BOEMRE anticipates future rulemaking to address the capture and disposition of oil released from a deepwater well blowout at the seafloor.

8. Organization and safety management—The Safety Measures Report recommended that the DOI evaluate the need to require all or part of the International Association of Drilling Contractors' Health, Safety, and Environmental Case Guidelines for Mobile Drilling Units. BOEMRE will evaluate the guidelines and determine how they will best fit with SEMS regulations that are being considered by BOEMRE for final publication in a separate rulemaking. BOEMRE published a notice of proposed rulemaking on SEMS requirements on June 17, 2009 (74 FR 28639).

Technical Consensus Standards

BOEMRE is aware that various organizations which support the offshore oil and gas industry are also studying the possible causes of the Deepwater Horizon event. Based on their findings, these organizations may make recommendations to their members on practices to increase the safety of offshore oil and gas operations in general with specific recommendations related to deepwater drilling operations. BOEMRE is reviewing the following subjects:

1. API Documents Concerning Cementing Practices

In § 250.198 of this interim final rule, BOEMRE incorporates API RP 65—Part 2, Isolating Potential Flow Zones During Well Construction, which summarizes best practices and addresses basic issues associated with cementing practices. The API has additional documents that address cementing practices in more detail.

2. Discussion of Additional Specifications and Recommended Practices

API Spec 16A: Specification for Drill-Through Equipment

This standard specifies requirements for performance, design, materials, testing and inspection, welding, marking, handling, storing, and shipping of drill-through equipment used for drilling for oil and gas. It also defines service conditions in terms of pressure, temperature, and wellbore fluids for which the equipment will be designed. This standard is applicable to, and establishes requirements for, the following specific equipment: ram BOPs; ram blocks, packers, and top seals; annular BOPs; annular packing units; hydraulic connectors; drilling spools; adapters; loose connectors; and clamps.

API Spec 16D: Specification for Control Systems for Drilling Well Control Equipment and Control Systems for Diverter Equipment

This specification provides design standards for systems used to control the BOP and associated valves that control well pressure during drilling operations. Diverter control systems are included in this specification because they are included in the BOP control system. This specification addresses the following categories: control systems for surface BOP stacks, control systems for subsea BOP stacks, discrete hydraulic control systems for subsea BOP stacks, electro-hydraulic/multiplex control systems for subsea BOP stacks, control systems for diverter equipment, auxiliary equipment control systems and interfaces, emergency disconnect sequenced systems (EDS), backup systems, and special deepwater/harsh environment features.

Certain standards in API Spec. 16D are of particular interest. These include optional sections—5.7 Emergency Disconnect Sequenced Systems (EDS), 5.8 Backup Control Systems, and 5.9 Special Deepwater/Harsh Environment Features. The EDS systems are required for floating drilling rigs in order to quickly disconnect the riser in the event of an inability to maintain rig position within a prescribed watch circle. Backup Control Systems include standards on acoustic systems, ROV control systems, LMRP recovery systems, and backup power supply. The Deepwater/Harsh Environment features give specifications for autoshear and deadman systems.

API Spec 17D: Specification for Subsea Wellhead and Christmas Tree Equipment

This specification was formulated to provide for the availability of safe, dimensionally, and functionally interchangeable subsea wellhead, mudline, and tree equipment. The technical content provides requirements for performance, design, materials, testing, inspection, welding, marking, handling, storing, and shipping. Critical components are those parts having a requirement specified in this document. Rework and repair of used equipment are beyond the scope of this specification.

API Recommended Practice 17H; ISO 13628–8: Remotely Operated Vehicle (ROV) Interfaces on Subsea Production Systems

This recommended practice gives functional requirements and guidelines for ROV interfaces on subsea production systems for the petroleum and natural gas industries. It is applicable to both the selection and use of ROV interfaces on subsea production equipment, and provides guidance on design as well as the operational requirements for maximizing the potential of standard equipment and design principles. The auditable information for subsea systems this document offers allows

interfacing and actuation by ROV-operated systems, while it identifies issues that have to be considered when designing interfaces on subsea production systems. The framework and detailed specifications set out enable the user to select the correct interface for a specific application.

API Recommended Practice 53: Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells

This recommended practice provides guidance for installation and testing of surface and subsea BOP equipment systems. This equipment system consists of a BOP, choke and kill lines, marine riser, and auxiliary equipment. The primary function of a BOP equipment system is to confine wellbore fluids, provide a means to add fluids, and allow controlled volumes to be withdrawn from the wellbore. This recommended practice also addresses diverter systems.

Other Items for Consideration

BOEMRE is also studying the following issues:

1. Following the certification of the BOP to meet the one-time requirement of NTL No. 2010–N05, frequency and conditions for recertification requirements.

2. Requirements for BOP equipment and other components of the BOP stack such as control panels, communication pods, accumulator systems, and choke and kill lines and the adequacy of API Spec 16A.

3. Standardization of the BOP–ROV interface to improve intervention capabilities.

4. Issues related to requiring a subsea isolation device that is independent of the BOP stack that is capable of operating critical functions that will shut in a well in emergency situations.

Procedural Matters

Regulatory Planning and Review (Executive Order (E.O.) 12866)

This interim final rule is a significant rule as determined by the Office of Management and Budget (OMB) and is subject to review under E.O. 12866.

1. This rule will have an annual effect of $100 million or more on the economy. The following discussion summarizes a detailed cost-benefit analysis that is available on *http://www.Regulations.gov*. Use the keyword/ID "BOEM–2010–0034" to locate the docket for this rule.

Various events around the world as well as the US over the years demonstrate that catastrophic oil spills can and do occur. The costs associated with such spills can be tremendous. As a matter of policy, BOEMRE has decided that any reasonable measures to reduce the risks of another catastrophic spill occurring on the OCS should be put in place and enforced. The requirements included in this rulemaking are such measures. They were identified in the May 27, 2010 report, Increased Safety Measures for Energy Development on the Outer Continental Shelf, for which the draft recommendations were peer-reviewed by seven experts identified by the National Academy of Engineering., or identified by industry or academic experts in materials presented to BOEMRE. While the estimated costs of this rulemaking, as reflected in the compliance costs of the enumerated requirements of approximately $180 million per year, have a strong foundation and are based on surveys of public and industry sources, quantification of the benefits is uncertain. The benefits are represented by the avoided costs of a catastrophic spill, which are estimated under the stipulated scenario as being $16.3 billion per spill avoided. These regulations will reduce the likelihood of another blowout and associated spill, but the risk reduction associated with the specific provisions of this rulemaking cannot be quantified because there are many complex factors that affect the risk of a blowout event. As noted by the Secretary of the Interior in his July 12 decision memo suspending certain drilling activities, drilling accidents can have a profound, devastating impact on the economic and environmental health of a region. The measures codified in this rule will reduce the likelihood of such an event in the future, at a cost that is not prohibitive, and therefore this rulemaking is justified.

The purpose of a benefit-cost analysis is to provide policy makers and others with detailed information on the economic consequences of the regulatory requirements. The benefit-cost analysis for this rule was conducted using a scenario analysis. The benefit-cost analysis considers a regulation designed to reduce the likelihood of a catastrophic oil spill. The costs are the compliance costs of imposed regulation. If another catastrophic oil spill is prevented, the benefits are the avoided costs associated with a catastrophic oil spill (*e.g.,* reduction in expected natural resource damages owing to the reduction in likelihood of failure).

Avoided cost is an approximation of the "true" benefits of avoiding a catastrophic oil spill. A benefits transfer approach is used to estimate the avoided costs. The benefits transfer method estimates economic values by transferring existing benefit calculations from studies already completed for another location or issue to the case at hand. Accordingly, none of the avoided costs used for a hypothetical catastrophic spill rely upon, or should be taken to represent, our estimate for the BPDH event commencing on April 20, 2010.

Three new requirements account for virtually all of the compliance costs imposed by this regulation (1) use of dual mechanical barriers in addition to cement barriers in the final casing string to prevent hydrocarbon flow in the event of cement failure, (2) application of negative pressure tests to all intermediate and the production casing strings to ensure their proper installation, and (3) maintenance of standby ROV capability to close BOP rams and testing that capability after the BOP has been installed on the sea floor. BOEMRE estimates that these three requirements will impose compliance costs of approximately $174 million per year, representing 95 percent of the total annual compliance costs of $183 million associated with this rulemaking. These cost estimates were developed by BOEMRE based on public data sources and confidential information provided by several offshore operators and drilling companies.

On the benefit side, the avoided costs for a hypothetical deepwater blowout resulting in a catastrophic oil spill are estimated to be about $16.3 billion (in 2010 dollars). Most of this amount derives from detailed cleanup estimates developed using damage costs per barrel measures found in historical spill data (from all sources including pipeline, tanker, and shallow water as well as deepwater wells) and from aggregate damage measures contained in the legal settlement documents for past spills applied to a catastrophic deepwater spill of hypothetical size. The rest of the avoided cost amount represents the private costs for blowout containment operations. In sum, three components account for nearly the entire avoided spill cost total: (1) Natural resource damage to habitat and creatures, (2) infrastructure salvage and cleanup operations of areas soiled by oil, and (3) containment and well-plugging actions plus lost hydrocarbons.

The estimate of compliance costs is somewhat uncertain. This is the case primarily because the $183 million annual estimate is perhaps higher than the actual costs that will be incurred by society from this rule because industry is voluntarily undertaking some steps following the BPDH event that overlap

those in this regulation. The Joint Industry Task Force draft recommendations include use of mechanical barriers and negative pressure tests. Voluntary action, perhaps spurred on as well by revised liability expectations and increased insurance prospects, means the incremental costs associated with these overlapping measures are not truly imposed solely by the new regulations. Less incremental required costs reduce the improvement in reliability necessary for expected benefits to cover the cost of complying with the new regulations. On the benefit side, the total avoided cost estimate of $16.3 billion (representing a measure of expected benefits for avoiding a future catastrophic oil spill) is highly uncertain because of the limited historical data upon which to judge the cost of failure, the disparity between the damages associated with spills of different sizes, locations, and season of occurrence, and owing to the fact that the measure employed reflects only those outlays that we have been able to calculate based primarily upon factors derived from past oil spills. Possible losses from human health effects or reduced property values have not been quantified in this analysis. Moreover, the likelihood of a future blow out leading to a catastrophic oil spill is difficult to quantify because of limited historical data on catastrophic offshore blowouts.

Benefit-Cost Result: Based on the occurrence of only a single catastrophic blowout, the number of GOM deepwater wells drilled historically (4,123), and the forecasted future drilling activity in the GOM (160 deepwater wells per year), the baseline risk of a catastrophic blowout is estimated to be about once every 26 years. Combining the baseline likelihood of occurrence with the cost of a hypothetical spill implies that the expected annualized spill cost is about $631 million ($16.3 billion once in 26 years, equally likely in any 1 year). To balance the $183 million annual cost imposed by these regulations with the expected benefits, the reliability of the well control system needs to improve by about 29 percent ($183 million/$631 million). We have found no studies that evaluate the degree of actual improvement that could be expected from dual mechanical barriers, negative pressure tests, and a seafloor ROV function test. We request comment with supporting evidence on the reliability improvement likely from these new provisions.

2. This interim final rule will not adversely affect competition or State, local, or tribal governments or communities.

3. This interim final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

4. This interim final rule will not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

5. This interim final rule will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Regulatory Flexibility Act: Initial Regulatory Flexibility Analysis

Given the emergency nature of these rules, BOEMRE has not yet prepared a detailed Initial Regulatory Flexibility Analysis for this rule; however, BOEMRE intends to publish a supplemental Initial Regulatory Flexibility Analysis in the near future which will examine the impact of this regulation on small entities in greater detail than provided below. BOEMRE continues to be interested in all potential impacts of the interim final rule on small entities and welcomes comments on issues related to such impacts. These comments will assist BOEMRE in conducting further analysis than provided below regarding the economic impact of these regulations on small entities, as well as an opportunity to examine regulatory alternatives that can accomplish BOEMRE's safety goals at a lower cost to small entities.

This rulemaking affects lessees, operators of leases and drilling contractors on the OCS; thus this rule directly impacts small entities. This could include about 130 active Federal oil and gas lessees and more than a dozen drilling contractors and their suppliers. Small entities that operate under this rule are coded under the Small Business Administration's North American Industry Classification System (NAICS) codes 211111, Crude Petroleum and Natural Gas Extraction, and 213111, Drilling Oil and Gas Wells. For these NAICS code classifications, a small company is one with fewer than 500 employees. Based on these criteria, approximately 70 percent of companies operating on the OCS (91) are considered small companies. Therefore, BOEMRE has determined that this proposed rule will have an impact on a substantial number of small entities.

The ownership share of deepwater leases for small entities is estimated to only be 12 percent. While a larger percentage of the oil service industry supporting the deepwater operators are small businesses, the lessees that hire and direct these support businesses will bear the burden of this rule. Small companies hold 55 percent of shallow water leases but a smaller portion of the costs of these regulations will affect drilling operations in shallow water.

This rule will affect every new well on the OCS. Tighter regulatory standards for drilling operations and the increased cost of meeting these requirements as a result of regulations for extra tests and well standards will now be required. We estimate that this rulemaking will impose a recurring cost of $183 million each year for drilling OCS wells. Every operator and drilling contractor both large and small must meet the same criteria for drilling operations regardless of company size. However, the overwhelming share of the cost imposed by these regulations will fall on companies drilling deepwater wells, which are predominately the larger companies. In fact, 90 percent of the total costs will be imposed on deepwater lessees and operators where small businesses only hold 12 percent of the leases. Less than 10 percent of the total costs will apply to shallow water leases where a 55 percent lease ownership share is held by small companies. Furthermore, these compliance costs only impact drilling operations. Drilling costs are only a share of the total costs incurred by a company operating on the OCS.

Nonetheless, small companies as both lease-holders, and contractors serving lease-holders, will bear meaningful costs under these regulations. Of the annual $183 million in annual cost imposed by the rule, we estimate that the $20 million will apply to small businesses in deepwater and $9 million in shallow water. In total we estimate that $29 million or 15.8 percent of these regulations' cost will be borne by small businesses.

Fiscal year 2009 aggregate annual Gulf of Mexico OCS oil and gas revenues were $31.3 billion. Using the same percentages of leases held as a proxy for production value in deep and shallow water, we estimate that 74 percent ($23.3 billion) of the OCS revenues are ultimately received by large companies and 26 percent ($8.1 billion) by small companies. As a share of fiscal year 2009 revenues this interim final rule would cost approximately 0.67 percent of OCS revenue for large companies and only 0.36 ($0.029/$8.1) percent for small companies.

Even though this rule may not have a significant economic impact on small businesses, alternatives to ease impacts on small business were considered. One alternative is to exempt small businesses from the requirements of this interim final rule. A second alternative is to delay the implementation timelines

to comply with the regulation. Both of these alternatives are being rejected by BOEMRE for this interim final rule because of the overriding need to reduce the chance of a catastrophic blowout event. We do not believe it is responsible for a regulator to compromise the safety of offshore personnel and the environment for any entity including small businesses. Offshore drilling is highly technical and can be hazardous, any delay may increase the interim risk of OCS drilling operations.

Small Business Regulatory Enforcement Fairness Act

This interim final rule is a major rule under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*). This interim final rule:

a. Will have an annual effect on the economy of $100 million or more. This rule will affect every new well on the OCS, and every operator, both large and small must meet the same criteria for well construction regardless of company size. This rulemaking may have a significant economic effect on a substantial number of small entities and the impact on small businesses will be analyzed more thoroughly in an Initial Regulatory Flexibility Analysis. While large companies will bear the majority of these costs, small companies as both leaseholders and contractors supporting OCS drilling operations will be affected.

Considering the new requirements for redundant barriers and new tests, we estimate that this rulemaking will add an average of about $1.42 million to each new deepwater well drilled and completed with a MODU, $170 thousand for each new deepwater well drilled with a platform rig, and $90 thousand for each new shallow water well. While not an insignificant amount, we note this extra recurring cost is less than 2 percent of the cost of drilling a well in deepwater and around 1 percent for most shallow water wells.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The impact on domestic deepwater hydrocarbon production as a result of these regulations is expected to be negative, but the size of the impact is not expected to materially impact the world oil markets. The deepwater GOM is an oil province and the domestic crude oil prices are set by the world oil markets. Currently there is sufficient spare capacity in OPEC to offset a decrease in GOM deepwater production that could occur as a result of this rule. Therefore, the increase in the price of hydrocarbon products to consumers from the increased cost to drill and operate on the OCS is expected to be minimal. However, more of the oil for domestic consumption may be purchased from overseas markets because the cost of OCS oil and gas production will rise relative to other sources of supply. This shift would contribute negatively to our balance of trade.

c. Will not have significant adverse effects on competition, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

d. May have adverse effects on employment, investment, and productivity. A meaningful increase in costs as a result of more stringent regulations and increased drilling costs may result in a reduction in the pace of deepwater drilling activity on marginal offshore fields, and reduce investment in our domestic energy resources from what it otherwise would be, thereby reducing employment in OCS and related support industries. The additional regulatory requirements in this rulemaking will increase drilling costs and add to the time it takes to drill deepwater wells. The resulting reduction in profitability of drilling operations may cause some declines in related investment and employment. A typical deepwater well drilled by a MODU may cost $90–$100 million. The added cost of these regulations for a deepwater well is expected to be about $1.42 million; this is less than a 2 percent decrease in productivity for drilling a deepwater well as a result of these regulations.

e. Accommodations for small business have not been made to avoid the risk of compromising the safety and environmental protections addressed in this rulemaking. Small businesses actively invest in offshore operations, owning a 12 percent interest in deepwater leases, most often as a minority partner. These regulations will make it more expensive for all interest holders in OCS leases, and we do not expect a disproportionate impact on small businesses. However, we anticipate that the costs in this rule may contribute to one or more of the following:

1. Reduce the small business ownership share in individual deepwater leases.

2. Cause small businesses to target their investments more in shallow water leases.

3. Cause small businesses to target their investments more in onshore oil and gas operations or other natural resources.

4. Small businesses may choose to invest or partner in overseas natural resource operations.

f. There are many small businesses that support offshore oil and gas drilling operations including service, supply, and consulting companies. They will also be affected by this rule. Because we can reasonably anticipate an overall decrease in deepwater drilling activity due to the increased cost and regulatory burden, some businesses that support drilling operations may experience reduced business activity. Some small businesses may therefore decide to focus more on shallow water or other oil and gas offshore provinces overseas.

g. There are some small businesses that may benefit from this rulemaking. Companies that are involved with inspecting and certifying this equipment, as well as consulting companies specializing in safety and offshore drilling, could see long-term growth.

Unfunded Mandates Reform Act of 1995

This rule will impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this rule does not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this rule does not have federalism implications. This rule will not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule will not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

a. Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and

ambiguity and be written to minimize litigation; and

b. Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this rule and determined that it has no substantial effects on federally recognized Indian tribes.

Paperwork Reduction Act (PRA)

This rule contains a collection of information that was submitted to and approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The rule expands existing requirements, as well as adds new requirements in 30 CFR part 250, subparts D, E, and F. The OMB approved these requirements and their respective burden hours under an emergency request, OMB Control Number 1010–0185, 44,731 hours (expiration 04/30/2011). We will be accepting comments on the information collection (IC) aspects and burdens of this rulemaking until 60 days after October 14, 2010.

The title of the collection of information for this rule is 30 CFR part 250, *Increased Safety Measures for Oil and Gas Drilling, Well-Completion, and Well-Workover Operations.*

Respondents primarily are the Federal OCS lessees and operators. The frequency of response varies depending upon the requirement. Responses to this collection of information are mandatory. BOEMRE will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552), its implementing regulations (43 CFR part 2), 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection,* and 30 CFR part 252, *OCS Oil and Gas Information Program.* Even though this rulemaking becomes effective immediately, BOEMRE will be accepting comments, see the **DATES** section, including the IC aspects of the rulemaking. See the **ADDRESSES** section for how to submit comments.

As discussed earlier in the preamble, this interim final rulemaking is a revision to various sections of the 30 CFR part 250 regulations that will amend drilling regulations in subparts D, E, F, O, and Q. This includes requirements that will implement various safety measures that pertain to drilling operations. The information collected will ensure sufficient redundancy in the BOPs; promote the integrity of the well and enhance well control; and facilitate a culture of safety through operational and personnel management. This rule will promote human safety and environmental protection.

Under § 250.198, this section lists all of the documents incorporated by reference in the 30 CFR part 250 regulations. This rulemaking revises this section to include the new 30 CFR part 250 document we are incorporating and the document already incorporated that we are updating. Under the PRA (5 CFR part 1320), information and recordkeeping produced during customary and usual business activities are excluded from agency IC burdens. Information submitted or reported to the Federal Government that goes beyond these practices does count as burdens and is required to have OMB approval under the PRA. We consider all of the activities and operations performed in accordance with the documents incorporated by reference involved in this rulemaking to be customary and usual business activities because they are consensus standards developed by working task force groups. These groups are comprised of subject matter experts from the industry and government in the following fields: Blowout preventer equipment, cementing, and well design. Any information and recordkeeping produced during the conduct of operations or activities performed under those standards, therefore, do not count as new or additional IC burdens.

The rulemaking clarifies requirements, but does not change the hour burdens in 30 CFR part 250, subpart O (1010–0128, expiration 11/30/2012). This rulemaking also references, but does not change, the requirements and burdens in 30 CFR part 250, subpart Q (1010–0142, expiration 11/30/2010). However, the rule does change and add new requirements to those already approved for 30 CFR part 250, subparts D, E, and F, as explained in the following paragraphs.

The current regulations on Oil and Gas Drilling Operations and associated IC are located in 30 CFR part 250, subpart D. The OMB approved the IC burden of the current subpart D regulations under control number 1010–0141 (expiration 11/30/2011). This interim final rule expands the current regulatory requirements and adds new requirements that pertain to subsea and surface BOPs, well casing and cementing, secondary intervention, unplanned disconnects, recordkeeping, well completion, and well plugging (+24,144 burden hours).

The current regulations on Oil and Gas Well-Completion Operations and associated IC are located in 30 CFR part 250, subpart E. The OMB approved the IC burden of the current subpart E regulations under control number 1010–0067 (expiration 12/31/2010). This interim final rule adds new regulatory requirements to this subpart that pertain to subsea and surface BOPs, secondary intervention, and well-completions (+4,669 burden hours).

The current regulations on Oil and Gas Well-Workover Operations and associated IC are located in 30 CFR part 250, subpart F. The OMB approved the IC burden of the current subpart F regulations under control number 1010–0043 (expiration 12/31/2010). This interim final rule adds new regulatory requirements to this subpart that pertain to subsea and surface BOPs, secondary intervention, unplanned disconnects, and well-workers (+15,918 burden hours).

When this rulemaking becomes effective, the additional 30 CFR part 250, subparts D, E, and F paperwork burdens will be incorporated into their respective primary collections; 1010–0141, 1010–0067, and 1010–0043, respectively.

The following table provides a breakdown of the new burdens.

Citation 30 CFR 250	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
	Subpart D			
408, 409; 410–418; 420(a)(6); 423(b)(3), (c)(1); 449(j), (k)(1); plus various references in subparts A, B, D, E, H, P, Q.	Apply for permit to drill/revised APD that includes any/all supporting documentation/evidence [test results, calculations, verifications, procedures, criteria, qualifications, etc.] and requests for various approvals required in subpart D (including §§ 250.423, 424, 427, 432, 442(c), 447, 448(c), 449(j), (k), 451(g), 456(a)(3), (f), 460, 490(c)(1), (2)) and submitted via Form MMS–123 (Application for Permit to Drill).	6	MMS–123 700	4,200
416(g)(2)	Provide 24 hour advance notice of location of shearing ram tests or inspections; allow BOEMRE access to witness testing, inspections and information verification.	10 mins	6 notifications	1
420(b)(3)	Submit dual mechanical barrier documentation after installation.	30 mins	700 submissions.	350
423(a)	Request approval of other pressure casing test pressures per District Manager.	Burden covered under 1010–0141.		0
423(b)(4), (c)(2)	Perform pressure casing test; document results and make available to BOEMRE upon request.	30 mins	700 drilling ops × 5 tests per ops = 3,500 tests.	1,750
442(c)	Request alternative method for the accumulator system	Burden covered under 1010–0141.		0
442(h)	Label all functions on all panels	30 mins	30 panels	15
442(i)	Develop written procedures for management system for operating the BOP stack and LMRP.	4	30 procedures	120
442(j)	Establish minimum requirements for authorized personnel to operate BOP equipment; require training.	Burden covered under 1010–0128.		0
446(a)	Document BOP maintenance and inspection procedures used; record results of BOP inspections and maintenance actions; maintain records for 2 years; make available to BOEMRE upon request.	1	105 rigs	105
449; 450; 467	Function test annular and rams; document results every 7 days between BOP tests (biweekly). Note: part of BOP test.	Burden covered under 1010–0141.		0
449(j)(2)	Test all ROV intervention functions on your subsea BOP stack; document all test results; make available to BOEMRE upon request.	10	110 wells	1,100
449(k)(2)	Function test autoshear and deadman on your subsea BOP stack during stump test; document all test results; make available to BOEMRE upon request.	30 mins	110 wells	55
456(i)	Record results of drilling fluid tests in drilling report	Burden covered under 1010–0141.		0
456(j)	Submit detailed step by step procedures describing displacement of fluids with your APD/APM [this submission obtains District Manager approval].	2	110 wells	220
460; 465; 449(j), (k)(1); 516(d)(8), (d)(9); 616(h)(1), (2); plus various references in subparts A, D, E, F, H, P, and Q.	Submit revised plans, changes, well/drilling records, procedures, certifications that include any/all supporting documentation etc., submitted on Form MMS–124 (Application for Permit to Modify).	4	MMS–124 4,057	16,228
Subtotal			9,458 responses	24,144
	Subpart E			
516(d)(8)	Submit test procedures with your APM for approval	Burden covered under 1010–0141.		0
516(d)(8)	Function test ROV interventions on your subsea BOP stack; document all test results; make available to BOEMRE upon request.	10	110 wells	1,100

Citation 30 CFR 250	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
516(d)(9)	Function test autoshear and deadman on your subsea BOP stack during stump test; document all test results; make available to BOEMRE upon request.	30 mins	1,048 completions.	524
516(g)(l)	Document the procedures used for BOP inspections; record results; maintain records for 2 years; make available to BOEMRE upon request.	7 days × 12 hrs/day = 84.	105 rigs/once every 3 years = 35 per year.	2,940
516(g)(2)	Request alternative method to inspect a marine riser	Burden covered under 1010–0067.		0
516(h)	Document the procedures used for BOP maintenance; record results; maintain records for 2 years; make available to BOEMRE upon request.	1	105 rigs	105
Subtotal			1,298 responses	4,669
Subpart F				
616(h)(l)	Test all ROV intervention functions on your subsea BOP stack; document all test results; make available to BOEMRE upon request.	10 hours	1,226 workovers	12,260
616(h)(2)	Function test autoshear and deadman on your subsea BOP stack during stump test; document all test results; make available to BOEMRE upon request.	30 mins	1,226 workovers	613
617(a)(l)	Document the procedures used for BOP inspections; record results; maintain records for 2 years; make available to BOEMRE upon request.	7 days × 12 hrs/day = 84.	105 rigs/once every 3 years = 35 per year.	2,940
617(a)(2)	Request approval to use alternative method to inspect a marine riser.	Burden covered under 1010–0067.		0
617(b)	Document the procedures used for BOP maintenance; record results; maintain records for 2 years; make available to BOEMRE upon request.	1	105 rigs	105
Subtotal			2,592 responses	15,918
Subpart Q				
1712(f), (g); 1721(h)	Submit with your APM, archaeological and sensitive biological features; Registered Professional Engineer certification.	Burden covered under 1010–0141.		0
1721(e)	Identify and report subsea wellheads, casing stubs, or other obstructions.	USCG requirements.		0
Total			13,348 responses.	44,731

BOEMRE plans to follow this interim final rule with a request for a standard, 3-year approval by OMB. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To facilitate processing of the normal clearance submission to OMB, BOEMRE invites the general public to comment on: (1) Whether this collection of information is necessary for the proper performance of BOEMRE's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (5) estimates of capital or start up costs, and costs of operation, maintenance and purchase of services to provide the information.

An agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number. The public may comment, at any time, on the accuracy of the IC burden in this rule and may submit any comments to the Department of the Interior; Bureau of Ocean Energy Management, Regulation and Enforcement; Attention: Regulations and Standards Branch; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

National Environmental Policy Act of 1969

We have prepared an environmental assessment to determine whether this rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969. This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required because we reached a Finding of No Significant Impact. A copy of the Environmental Assessment can be viewed at *http://www.Regulations.gov* (type in "environmental assessment" for

the document type and use the keyword/ID "BOEM–2010–0034").

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This rule is a significant rule and is subject to review by the Office of Management and Budget under E.O. 12866. The rule does have an effect on energy supply, distribution, or use because its provisions may delay development of some OCS oil and gas resources. The delay stems from the extra drill time and cost imposed on new wells which will somewhat slow exploration and development operations. We estimate an average delay of 2 days and cost of $1.42 million for most deepwater wells in the GOM.

Increased imports or inventory drawdowns should compensate for most of the delay or reduction in domestic production. The recurring costs imposed on new drilling by this rule are very small (2 percent) relative to the cost of drilling a well in deepwater. In view of the high risk-reward associated with deepwater exploration in general, we do not expect this small regulatory surcharge from this rule to result in meaningful reduction in discoveries. Thus, we expect the net change in supply associated with this rule will cause only a slight increase in oil and gas prices relative to what they otherwise would have been. Normal volatility in both oil and gas market prices overshadow these rule related price effects, so we consider this an insignificant effect on energy supply and price.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

a. Be logically organized;

b. Use the active voice to address readers directly;

c. Use clear language rather than jargon;

d. Be divided into short sections and sentences; and

e. Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Appendix A

BOEMRE Response to the Deepwater Horizon Event and Resulting Oil Spill

I. Description

On April 20, 2010, the crew of the Transocean drilling rig Deepwater Horizon was preparing to temporarily abandon BP's discovery well at the Macondo prospect, 52 miles from shore in 4,992 feet of water in the GOM. An explosion and subsequent fire on the rig caused 11 fatalities and several injuries. The rig sank 2 days later, resulting in an uncontrolled release of oil that was declared a spill of national significance.

II. Status of BOEMRE/USCG Joint Investigation

The DOI and USCG are undertaking a joint investigation into the causes of the explosions and fire on the Deepwater Horizon. This joint investigation includes members of BOEMRE and the USCG and involves issuing subpoenas for documents and testimony, obtaining expert analyses of data and reports, holding public hearings, calling witnesses, and taking any other steps necessary to determine the cause of the spill. The purpose of this joint investigation is to develop conclusions about the cause and recommendations for preventing a similar event. The facts collected at the public hearings, along with the lead investigators' conclusions and recommendations, will be forwarded to USCG Headquarters and BOEMRE for approval. Once approved, the final investigative report will be made available to the public and the media. The team has been given 9 months, from the date of the convening order (April 27, 2010), to submit the final report.

III. DOI and BOEMRE actions

In response to the Deepwater Horizon event, DOI and BOEMRE have taken several actions, as outlined below. Numerous other investigations and reviews have been commenced, including an investigation by the DOI Safety Oversight Board; an investigation by the President's National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling; the USCG incident Specific Preparedness Review; a review by the National Academy of Engineering; a review by the U.S. Chemical Safety Board; and others. This Appendix addresses only BOEMRE actions. These are as follows:

1. Issued a Joint Safety Alert with USCG on April 30, 2010.

2. Published the Safety Measures Report on May 27, 2010, at the request of the President.

3. Issued National NTL No. 2010–N05, "Increased Safety Measures for Energy Development on the OCS," to implement the immediate recommendations from the Safety Measures Report.

4. Issued National NTL No. 2010–N06, "Information Requirements for Exploration Plans, Development and Production Plans, and Development Operations Coordination Documents on the OCS."

5. Implemented Secretarial Decision dated July 12, 2010, ordering the suspensions of drilling activities that use a subsea BOP stack and drilling from floating facilities with a surface BOP stack.

6. Held public meetings to collect information and views about deepwater drilling safety reforms, blowout containment, and oil spill response.

1. Joint USCG–BOEMRE Safety Alert

On April 30, 2010, USCG and BOEMRE issued a National Safety Alert No. 2 concerning the Deepwater Horizon event and resulting oil spill. BOEMRE and the USCG included the following safety recommendations to operators and drilling contractors:

(1) Examine all well control equipment (both surface and subsea) currently being used to ensure that it has been properly maintained and is capable of shutting in the well during emergency operations. Ensure that the ROV hot-stabs are function-tested and are capable of actuating the BOP.

(2) Review all rig drilling/casing/completion practices to ensure that well control contingencies are not compromised at any point while the BOP is installed on the wellhead.

(3) Review all emergency shutdown and dynamic positioning procedures that interface with emergency well control operations.

(4) Inspect lifesaving and firefighting equipment for compliance with Federal requirements.

(5) Ensure that all crew members are familiar with emergency/firefighting equipment, as well as participate in an abandon ship drill. Operators are reminded that the review of emergency equipment and drills should be conducted after each crew change out.

(6) Exercise emergency power equipment to ensure proper operation.

(7) Ensure that all personnel involved in well operations are properly trained and capable of performing their tasks under both normal drilling and emergency well control operations.

2. Safety Measures Report

a. Summary

On April 30, 2010, the President ordered the Secretary of the Interior to conduct a

thorough review of this event and to report, within 30 days, on what, if any, additional precautions and technologies should be required to improve the safety of oil and gas exploration and production operations on the OCS. The Safety Measures Report was presented to the President on May 27, 2010. A copy of the report is available at: *http://www.doi.gov/news/pressreleases/loader.cfm?csModule=security/getfile&PageID=33646.*

The Safety Measures Report was developed without the benefit of the findings from the ongoing investigations into the root causes of the explosions and fire on the Deepwater Horizon and the resulting oil spill. In the coming months, those investigations will likely suggest refinements to some of this report's recommendations, as well as additional safety measures.

The Safety Measures Report includes a history of OCS production, spills, and blowouts; a review of the existing U.S. regulatory and enforcement structure; a survey of other countries' regulatory approaches; and a summary of existing BOEMRE-sponsored studies on technologies that could reduce the risk of blowouts. The report examines all aspects of drilling operations, including equipment, procedures, personnel management, and inspections and verification in an effort to identify safety and environmental protection measures that would reduce the risk of a catastrophic event. In particular, this report examines several issues highlighted by the Deepwater Horizon event regarding operational and personnel safety while conducting drilling operations in deepwater environments.

The Safety Measures Report includes a number of recommendations to improve the safety of oil and gas drilling operations on the OCS. These recommendations address:

- Well-control and well abandonment operations;
- Specific requirements for devices, such as BOPs and their testing;
- Industry practices;
- Worker training;
- Inspection protocol and operator oversight; and
- The responsibility of the Department for safety and enforcement.

The draft recommendations were peer reviewed by seven experts identified by the National Academy of Engineering.

b. Implementation teams. To inform the efforts related to implementation of some of the recommendations from the Safety Measures Report, the DOI Safety Oversight Board Report, the recommendations to be developed by the President's bipartisan National Commission and other investigative and reviewing bodies, DOI is establishing Department-led implementation teams. These teams, initially described as "strike teams" in the Safety Measures Report, will evaluate various issues, both highly technical and non-technical.

The implementation teams will seek input as appropriate from academia, industry, and other technical experts and stakeholders. They will develop and present their recommendations for further actions to address additional environmental protection and safety measures. The Department may use the recommendations from these implementation teams to:

(1) Inform future rulemaking,

(2) Develop internal policy for inspections and enforcement of regulations,

(3) Identify future research needs.

3. NTL No. 2010–N05—Increased Safety Measures for Energy Development on the OCS

The NTL No. 2010–N05, "Increased Safety Measures for Energy Development on the OCS," addressed the recommendations from the Safety Measures Report that warranted immediate implementation. The link to this NTL is: *http://www.gomr.boemre.gov/homepg/regulate/regs/ntls/2010NTLs/10-n05.pdf.*

BOEMRE issued this NTL on June 8, 2010, as a result of the Deepwater Horizon event. The NTL addresses the recommendations in the report to the President entitled, "Increased Safety Measures for Energy Development on the Outer Continental Shelf" dated May 27, 2010, and details under then-existing regulations the requirements lessees and operators must meet to operate on the OCS. Following are the specific items included in the NTL:

Operators are required to:

- Verify compliance with existing regulations and Safety Alert issued on April 30, 2010.
- Submit BOP and well control system configuration information for the drilling rig that was being used.
- Recertify all BOP equipment before resuming drilling.
- Have documentation showing that the BOP has been maintained according to the regulations at 30 CFR 250.446(a). The operators are required to maintain records and make them available upon request.
- Obtain independent third party verification that the BOP stack is designed for the specific equipment on the rig and compatible with the specific well location, well design, and well execution plan; the BOP stack has not been compromised or damaged from previous service; and the BOP stack will operate in the conditions in which it will be used.
- Have a secondary control system with ROV intervention capabilities, including the ability to close one set of blind-shear rams and one set of pipe rams and unlatch the LMRP.
- Have an emergency shut-in system in the event that you lose power to the BOP stack, have an unplanned disconnection of the riser from the BOP stack, or experience another emergency situation.
- Function test the hot stabs that would be used to interface with the ROV intervention panel during the stump test.
- Obtain an independent third party verification that provides sufficient information showing that the blind-shear rams installed in the BOP stack are capable of shearing the drill pipe in the hole under maximum anticipated surface pressures.
- If the blind-shear rams or casing shear rams are activated in a well control situation in which pipe or casing was sheared, operators must inspect and test the BOP stack and its components, after the situation is fully controlled.
- Have all well casing designs and cementing program/procedures certified by a Professional Engineer, verifying the casing design is appropriate for the purpose for which it is intended under expected wellbore conditions.
- Submit the relevant information discussed in the NTL prior to commencing those operations, and drilling may not commence without BOEMRE approval.

4. NTL No. 2010–N06—Information Requirements for Exploration Plans, Development and Production Plans, and Development Operations Coordination Documents on the OCS

The link to this NTL is: *http://www.gomr.boemre.gov/homepg/regulate/regs/ntls/2010NTLs/10-n06.pdf.*

BOEMRE issued this NTL on June 18, 2010. This NTL provides guidance to lessees and operators regarding the blowout and oil spill information required in the exploration and development plan documents submitted to BOEMRE, including:

A blowout scenario as required by 30 CFR 250.213(g) and 250.243(h), including:

Highest volume of liquid hydrocarbons;

Estimated flow rate, total volume, and maximum duration;

Potential for the well to bridge over;

Likelihood for surface intervention to stop the blowout;

Availability of a rig to drill a relief well;

Time frame to drill a relief well.

A description of the assumptions and calculations used to determine the volume of the worst case discharge scenario, including:

Well design;

Reservoir characteristics;

Fluid characteristics;

Pressure, volume, and temperature characteristics;

Analog reservoir assumptions;

Supporting calculations and models used in determining worst case scenario.

5. Secretarial Decision Suspending Drilling Activities That Use Subsea BOP Stacks and Drilling From Floating Facilities With a Surface BOP Stack

On July 12, 2010, the Secretary issued a decision directing BOEMRE to suspend the drilling of wells using subsea BOPs or surface BOPs on floating facilities, and to cease approval of pending and future applications for permits to drill using subsea BOPs or surface BOPs on floating facilities. These directives apply in the GOM and Pacific regions through November 30, 2010, subject to modification if the Secretary determines that the significant threats to life, property, and the environment set forth in his decision have been sufficiently addressed. This includes additional information about the causes of the Deepwater Horizon Oil Spill. Several investigations and reviews are being undertaken to identify the root causes of the disaster, including a joint BOEMRE–USCG investigation, a review by the NAE, on-going Congressional inquiries, and the National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling (Presidential Commission). The results of these will better inform DOI decision-making and longer-term rulemaking.

Following this decision, on July 12, 2010, BOEMRE issued suspension orders of most

deepwater drilling operations on the OCS through November 30, 2010. BOEMRE stopped approval of pending and future deepwater drilling applications in the GOM and Pacific regions.

6. Held Public Meetings to Collect Information and Views About Deepwater Drilling Safety Reforms, Blowout Containment, and Oil Spill Response

As directed by the Secretary in the Decision of July 12, 2010, the BOEMRE Director led a series of public meetings to collect information and views about deepwater drilling safety reforms, blowout containment, and oil spill response. The Director solicited input from the general public, state, and local leaders, experts from academia, the environmental community, and the oil and gas industry. The link to the Public Forums on Offshore Drilling is: *http://www.boemre.gov/forums/.* The webpage provides information and presentations from each meeting. The meetings were held in August and September in the following cities: New Orleans, Louisiana; Mobile, Alabama; Pensacola, Florida; Santa Barbara, California; Anchorage, Alaska; Houston, Texas; Biloxi, Mississippi; Lafayette, Louisiana.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Incorporation by reference, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

Dated: October 1, 2010.

Wilma A. Lewis,

Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, under the authority of 43 U.S.C. 1334 and Section 2 or Reorganization Plan No. 3 of 1950, 64 Stat. 1262, as amended, the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) is amending 30 CFR chapter II as follows:

Title 30—Mineral Resources

CHAPTER II—BUREAU OF OCEAN ENERGY MANAGEMENT, REGULATION AND ENFORCEMENT, DEPARTMENT OF THE INTERIOR

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

■ 2. Amend § 250.198 by:

■ a. Adding a new paragraph (a)(3),

■ b. Revising paragraph (h)(63), and

■ c. Adding new paragraph (h)(79) to read as follows:

§ 250.198 Documents incorporated by reference.

(a) * * *

(3) The effect of incorporation by reference of a document into the regulations in this part is that the incorporated document is a requirement. When a section in this part incorporates all of a document, you are responsible for complying with the provisions of that entire document, except to the extent that section provides otherwise. When a section in this part incorporates part of a document, you are responsible for complying with that part of the document as provided in that section. If any incorporated document uses the word *should,* it means *must* for purposes of these regulations.

* * * * *

(h) * * *

(63) API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells, Third Edition, March 1997; reaffirmed September 2004, Order No. G53003; incorporated by reference at § 250.442(c); § 250.446(a); § 250.516(g)(1); § 250.516(h); and § 250.617(a)(1), and (b);

* * * * *

(79) API RP 65–Part 2, Isolating Potential Flow Zones During Well Construction; First Edition, May 2010; Product No. G65201; incorporated by reference at § 250.415(f).

* * * * *

■ 3. Amend § 250.415 as follows:

■ a. Revise paragraphs (c), (d), and (e)(2), and

■ b. Add new paragraph (f) to read as follows:

§ 250.415 What must my casing and cementing programs include?

* * * * *

(c) Type and amount of cement (in cubic feet) planned for each casing string;

(d) * * * Your program must provide protection from thaw subsidence and freezeback effect, proper anchorage, and well control;

(e) * * *

(2) An "area known to contain a shallow water flow hazard" is a zone or geologic formation for which drilling has confirmed the presence of shallow water flow; and

(f) A written description of how you evaluated the best practices included in API RP 65–Part 2, Isolating Potential Flow Zones During Well Construction (incorporated by reference as specified in § 250.198). Your written description must identify the mechanical barriers and cementing practices you will use for each casing string (reference API RP 65–Part 2, Sections 3 and 4).

■ 4. Amend § 250.416 by revising paragraphs (d) and (e) and adding new paragraphs (f) and (g) to read as follows:

§ 250.416 What must I include in the diverter and BOP descriptions?

* * * * *

(d) A schematic drawing of the BOP system that shows the inside diameter of the BOP stack, number and type of preventers, all control systems and pods, location of choke and kill lines, and associated valves;

(e) Independent third party verification and supporting documentation that show the blind-shear rams installed in the BOP stack are capable of shearing any drill pipe in the hole under maximum anticipated surface pressure. The documentation must include test results and calculations of shearing capacity of all pipe to be used in the well including correction for MASP;

(f) When you use a subsea BOP stack, independent third party verification that shows:

(1) the BOP stack is designed for the specific equipment on the rig and for the specific well design;

(2) The BOP stack has not been compromised or damaged from previous service;

(3) The BOP stack will operate in the conditions in which it will be used; and

(g) The qualifications of the independent third party referenced in paragraphs (e) and (f) of this section:

(1) The independent third party in paragraph (e) in this section must be a technical classification society; an API-licensed manufacturing, inspection, or certification firm; or a licensed professional engineering firm capable of providing the verifications required under this part. The independent third party must not be the original equipment manufacturer (OEM).

(2) You must:

(i) Include evidence that the firm you are using is reputable, the firm or its employees hold appropriate licenses to perform the verification in the appropriate jurisdiction, the firm carries industry-standard levels of professional liability insurance, and the firm has no record of violations of applicable law.

(ii) Ensure that an official representative of BOEMRE will have access to the location to witness any testing or inspections, and verify information submitted to BOEMRE. Prior to any shearing ram tests or inspections, you must notify the District Manager at least 24 hours in advance.

■ 5. Amend § 250.418 as follows:

■ a. Revise paragraph (g),

■ b. Redesignate paragraph (h) as paragraph (j), and

■ c. Add new paragraphs (h) and (i) to read as follows:

§ 250.418 What additional information must I submit with my APD?

* * * * *

(g) A request for approval if you plan to wash out or displace some cement to facilitate casing removal upon well abandonment;

(h) Certification of your casing and cementing program as required in § 250.420(a)(6);

(i) Description of qualifications required by § 250.416(f) of any independent third party; and

* * * * *

■ 6. Amend § 250.420 as follows:

■ a. Revise paragraphs (a)(4) and (a)(5),

■ b. Add new paragraph (a)(6),

■ c. Add new paragraph (b)(3) to read as follows:

§ 250.420 What well casing and cementing requirements must I meet?

* * * * *

(a) * * *

(4) Protect freshwater aquifers from contamination;

(5) Support unconsolidated sediments; and

(6) Include certification signed by a Registered Professional Engineer that there will be at least two independent tested barriers, including one mechanical barrier, across each flow path during well completion activities and that the casing and cementing design is appropriate for the purpose for which it is intended under expected wellbore conditions. The Registered Professional Engineer must be registered in a State in the United States. Submit this certification with your APD (Form MMS–123).

(b) * * *

(3) For the final casing string (or liner if it is your final string), you must install dual mechanical barriers in addition to cement, to prevent flow in the event of a failure in the cement. These may include dual float valves, or one float valve and a mechanical barrier. You must submit documentation to BOEMRE 30 days after installation of the dual mechanical barriers.

* * * * *

■ 7. Revise § 250.423 to read as follows:

§ 250.423 What are the requirements for pressure testing casing?

(a) The table in this section describes the minimum test pressures for each string of casing. You may not resume drilling or other down-hole operations until you obtain a satisfactory pressure test. If the pressure declines more than 10 percent in a 30-minute test, or if there is another indication of a leak, you must re-cement, repair the casing, or run additional casing to provide a proper seal. The District Manager may approve or require other casing test pressures.

Casing type	Minimum test pressure
(1) Drive or Structural	Not required.
(2) Conductor	200 psi.
(3) Surface, Intermediate, and Production	70 percent of its minimum internal yield.

(b) You must ensure proper installation of casing or liner in the subsea wellhead or liner hanger.

(1) You must ensure that the latching mechanisms or lock down mechanisms are engaged upon installation of each casing string or liner.

(2) You must perform a pressure test on the casing seal assembly to ensure proper installation of casing or liner. You must perform this test for the intermediate and production casing strings or liner.

(3) You must submit for approval with your APD, test procedures and criteria for a successful test.

(4) You must document all your test results and make them available to BOEMRE upon request.

(c) You must perform a negative pressure test on all wells to ensure proper casing installation. You must perform this test for the intermediate and production casing strings.

(1) You must submit for approval with your APD, test procedures and criteria for a successful test.

(2) You must document all your test results and make them available to BOEMRE upon request.

■ 8. Amend § 250.442 by revising the section heading and the section to read as follows:

§ 250.442 What are the requirements for a subsea BOP system?

When you drill with a subsea BOP system, you must install the BOP system before drilling below the surface casing. The District Manager may require you to install a subsea BOP system before drilling below the conductor casing if proposed casing setting depths or local geology indicate the need. The table in this paragraph outlines your requirements.

When drilling with a subsea BOP system, you must:	Additional requirements
(a) Have at least four remote-controlled, hydraulically operated BOPs.	You must have at least one annular BOP, two BOPs equipped with pipe rams, and one BOP equipped with blind-shear rams. The blind-shear rams must be capable of shearing any drill pipe in the hole under maximum anticipated surface pressures.
(b) Have an operable dual-pod control system to ensure proper and independent operation of the BOP system.	
(c) Have an accumulator system to provide fast closure of the BOP components and to operate all critical functions in case of a loss of the power fluid connection to the surface.	The accumulator system must meet or exceed the provisions of Section 13.3, Accumulator Volumetric Capacity, in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). The District Manager may approve a suitable alternate method.
(d) Have a subsea BOP stack equipped with remotely operated vehicle (ROV) intervention capability.	At a minimum, the ROV must be capable of closing one set of pipe rams, closing one set of blind-shear rams and unlatching the LMRP.
(e) Maintain an ROV and have a trained ROV crew on each floating drilling rig on a continuous basis. The crew must examine all ROV related well control equipment (both surface and subsea) to ensure that it is properly maintained and capable of shutting in the well during emergency operations.	The crew must be trained in the operation of the ROV. The training must include simulator training on stabbing into an ROV intervention panel on a subsea BOP stack.

When drilling with a subsea BOP system, you must:	Additional requirements
(f) Provide autoshear and deadman systems for dynamically positioned rigs.	(1) *Autoshear system* means a safety system that is designed to automatically shut in the wellbore in the event of a disconnect of the LMRP. When the autoshear is armed, a disconnect of the LMRP closes the shear rams. This is considered a "rapid discharge" system. (2) *Deadman System* means a safety system that is designed to automatically close the wellbore in the event of a simultaneous absence of hydraulic supply and signal transmission capacity in both subsea control pods. This is considered a "rapid discharge" system. (3) You may also have an acoustic system.
(g) Have operational or physical barrier(s) on BOP control panels to prevent accidental disconnect functions.	Incorporate enable buttons on control panels to ensure two-handed operation for all critical functions.
(h) Clearly label all control panels for the subsea BOP system.	Label other BOP control panels such as hydraulic control panel.
(i) Develop and use a management system for operating the BOP system, including the prevention of accidental or unplanned disconnects of the system.	The management system must include written procedures for operating the BOP stack and LMRP (including proper techniques to prevent accidental disconnection of these components) and minimum knowledge requirements for personnel authorized to operate and maintain BOP components.
(j) Establish minimum requirements for personnel authorized to operate critical BOP equipment.	Personnel must have: (1) Training in deepwater well control theory and practice according to the requirements of 30 CFR 250, subpart O; and (2) A comprehensive knowledge of BOP hardware and control systems.
(k) Before removing the marine riser, displace the fluid in the riser with seawater.	You must maintain sufficient hydrostatic pressure or take other suitable precautions to compensate for the reduction in pressure and to maintain a safe and controlled well condition.
(l) Install the BOP stack in a glory hole when in ice-scour area.	Your glory hole must be deep enough to ensure that the top of the stack is below the deepest probable ice-scour depth.

■ 9. Amend § 250.446 by revising paragraph (a) to read as follows:

§ 250.446 What are the BOP maintenance and inspection requirements?

(a) You must maintain and inspect your BOP system to ensure that the equipment functions properly. The BOP maintenance and inspections must meet or exceed the provisions of Sections 17.10 and 18.10, Inspections; Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You must document the procedures used, record the results of your BOP inspections and maintenance actions, and make available to BOEMRE upon request. You must maintain your records on the rig for 2 years or from the date of your last major inspection, whichever is longer;

* * * * *

■ 10. Amend § 250.449, by revising paragraphs (h) and (i) and adding new paragraphs (j) and (k) to read as follows:

§ 250.449 What additional BOP testing requirements must I meet?

* * * * *

(h) Function test annular and ram BOPs every 7 days between pressure tests;

(i) Actuate safety valves assembled with proper casing connections before running casing;

(j) Test all ROV intervention functions on your subsea BOP stack during the stump test. You must also test at least one set of rams during the initial test on the seafloor. You must submit test procedures with your APD or APM for District Manager approval. You must:

(1) ensure that the ROV hot stabs are function tested and are capable of actuating, at a minimum, one set of pipe rams and one set of blind-shear rams and unlatching the LMRP; and

(2) document all your test results and make them available to BOEMRE upon request;

(k) Function test autoshear and deadman systems on your subsea BOP stack during the stump test. You must also test the deadman system during the initial test on the seafloor.

(1) You must submit test procedures with your APD or APM for District Manager approval.

(2) You must document all your test results and make them available to BOEMRE upon request.

■ 11. Amend § 250.451 by adding new paragraph (i) to the table to read as follows:

§ 250.451 What must I do in certain situations involving BOP equipment or systems?

* * * * *

If you encounter the following situation:	Then you must * * *
* * * * * * *	
(i) You activate blind-shear rams or casing shear rams during a well control situation, in which pipe or casing is sheared.	Retrieve, physically inspect, and conduct a full pressure test of the BOP stack after the situation is fully controlled.
* * * * * * *	

■ 12. Amend § 250.456 by:

■ a. Revising the last sentence in paragraph (i),

■ b. Redesignating paragraph (j) as (k), and

■ c. Adding a new paragraph (j) to read as follows:

§ 250.456 What safe practices must the drilling fluid program follow?

* * * * *

(i) * * * You must record the results of these tests in the drilling fluid report;

(j) Before displacing kill-weight drilling fluid from the wellbore, you must obtain prior approval from the District Manager. To obtain approval, you must submit with your APD or APM your reasons for displacing the kill-weight drilling fluid and provide detailed step-by-step written procedures describing how you will safely displace these fluids. The step-by-step displacement procedures must address the following:

(1) number and type of independent barriers that are in place for each flow path,

(2) tests you will conduct to ensure integrity of independent barriers,

(3) BOP procedures you will use while displacing kill weight fluids, and

(4) procedures you will use to monitor fluids entering and leaving the wellbore; and

* * * * *

■ 13. Amend § 250.515 by adding new paragraphs (b)(5) and (e) to read as follows:

§ 250.515 Blowout prevention equipment.

* * * * *

(b) * * *

When	The minimum BOP stack must include
* * * * * * *	
(5) You use a subsea BOP stack	The requirements in § 250.442(a) of this part.
* * * * * * *	

* * * * *

(e) The subsea BOP system for well-completions must meet the requirements in § 250.442 of this part.

■ 14. Amend § 250.516 by:

■ a. Revising (d)(6);

■ b. Adding new paragraphs (d)(8) and (d)(9); and

■ c. Revising paragraphs (g) and (h) to read as follows:

§ 250.516 Blowout preventer system tests, inspections, and maintenance.

* * * * *

(d) * * *

(6) Pressure-test variable bore-pipe rams against all sizes of pipe in use, excluding drill collars and bottom-hole tools;

* * * * *

(8) Test all ROV intervention functions on your subsea BOP stack during the stump test. You must also test at least one set of rams during the initial test on the seafloor. You must submit test procedures with your APM for District Manager approval. You must:

(i) Ensure that the ROV hot stabs are function tested and are capable of actuating, at a minimum, one set of pipe rams and one set of blind-shear rams and unlatching the LMRP;

(ii) Document all your test results and make them available to BOEMRE upon request; and

(9) Function test autoshear and deadman systems on your subsea BOP stack during the stump test. You must also test the deadman system during the initial test on the seafloor.

(i) You must submit test procedures with your APM for District Manager approval.

(ii) You must document all your test results and make them available to BOEMRE upon request.

* * * * *

(g) *BOP inspections.* (1) You must inspect your BOP system to ensure that the equipment functions properly. The BOP inspections must meet or exceed the provisions of Sections 17.10 and 18.10, Inspections, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You must document the procedures used, record the results, and make them available to BOEMRE upon request. You must maintain your records on the rig for 2 years or from the date of your last major inspection, whichever is longer.

(2) You must visually inspect your BOP system and marine riser at least once each day if weather and sea conditions permit. You may use television cameras to inspect this equipment. The District Manager may approve alternate methods and frequencies to inspect a marine riser.

(h) *BOP maintenance.* You must maintain your BOP system to ensure that the equipment functions properly. The BOP maintenance must meet or exceed the provisions of Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You must document the procedures used, record the results, and make available to BOEMRE upon request. You must maintain your records on the rig for 2 years or from the date of your last major inspection, whichever is longer.

* * * * *

■ 15. Amend § 250.615 by:

■ a. Adding new paragraph (b)(5),

■ b. Redesignating paragraphs (e) through (g) as (f) through (h), and

■ c. Adding new paragraph (e) to read as follows:

§ 250.615 Blowout prevention equipment.

* * * * *

(b) * * *

When	The minimum BOP stack must include
* * * * * * *	
(5) You use a subsea BOP stack	The requirements in § 250.442(a) of this part.
* * * * * * *	

(e) The subsea BOP system for well-workover operations must meet the requirements in § 250.442 of this part.

* * * * *

■ 16. Amend § 250.616 by adding new paragraph (h) to read as follows:

§ 250.616 Blowout preventer system testing, records, and drills.

* * * * *

(h) Stump test a subsea BOP system before installation. You must:

(1) Test all ROV intervention functions on your subsea BOP stack during the stump test. You must also test at least one set of rams during the initial test on the seafloor. You must submit test procedures with your APM for District Manager approval. You must:

(i) Ensure that the ROV hot stabs are function tested and are capable of actuating, at a minimum, one set of pipe rams and one set of blind-shear rams and unlatching the LMRP;

(ii) Document all your test results and make them available to BOEMRE upon request; and

(2) Function test autoshear and deadman systems on your subsea BOP stack during the stump test. You must also test the deadman system during the initial test on the seafloor. You must:

(i) Submit test procedures with your APM for District Manager approval.

(ii) Document the results of each test and make them available to BOEMRE upon request.

(3) Use water to stump test a subsea BOP system. You may use drilling or completion fluids to conduct subsequent tests of a subsea BOP system.

§§ 250.617 and 250.618 [Redesignated as §§ 250.618 and 250.619]

■ 17. Redesignate §§ 250.617 and 250.618 to §§ 250.618 and 250.619, respectively.

■ 18. Add new § 250.617 to read as follows:

§ 250.617 What are my BOP inspection and maintenance requirements?

(a) *BOP inspections.*

(1) You must inspect your BOP system to ensure that the equipment functions properly. The BOP inspections must meet or exceed the provisions of Sections 17.10 and 18.10, Inspections, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You must document the procedures used, record the results, and make them available to BOEMRE upon request. You must maintain your records on the rig for 2 years or from the date of your last major inspection, whichever is longer.

(2) You must visually inspect your BOP system and marine riser at least once each day if weather and sea conditions permit. You may use television cameras to inspect this equipment. The District Manager may approve alternate methods and frequencies to inspect a marine riser.

(b) *BOP maintenance.* You must maintain your BOP system to ensure that the equipment functions properly. The BOP maintenance must meet or exceed the provisions of Sections 17.11 and 18.11, Maintenance; and Sections 17.12 and 18.12, Quality Management, described in API RP 53, Recommended Practices for Blowout Prevention Equipment Systems for Drilling Wells (incorporated by reference as specified in § 250.198). You must document the procedures used, record the results, and make them available to BOEMRE upon request. You must maintain your records on the rig for 2 years or from the date of your last major inspection, whichever is longer.

■ 19. In §§ 250.1500:

■ a. Amend the definition of "Contractor and contract personnel" and the definition of "Employee" by removing the phrase "well control or production safety", and in its place add the phrase "well control, deepwater well control, or production safety"; and

■ b. Add definitions for "Deepwater well control", "Well completion/well workover", Well control", and "Well servicing" in alphabetical order to read as follows:

§ 250.1500 Definitions.

* * * * *

Deepwater well control means well control when you are using a subsea BOP system.

* * * * *

Well completion/well workover means those operations following the drilling of a well that are intended to establish or restore production.

Well control means methods used to minimize the potential for the well to flow or kick and to maintain control of the well in the event of flow or a kick during drilling, well completion, well workover, and well servicing operations.

Well servicing means snubbing, coiled tubing, and wireline operations.

§ 250.1501 [Amended]

■ 20. In §§ 250.1501, remove the phrase "well control or production safety", and in its place add the phrase "well control, deepwater well control, or production safety".

§ 250.1503 [Amended]

■ 21. In §§ 250.1503:

■ a. Redesignating paragraphs (b) and (c) as paragraphs (c) and (d);

■ b. Amending paragraphs (a), (c)(1), (c)(3) and (d)(1) by removing the phrase "well control or production safety", and in its place adding the phrase "well control, deepwater well control, or production safety";

■ c. Amend paragraph (a) by removing the phrase "well control and production safety", and in its place adding the phrase "well control, deepwater well control, and production safety"; and

■ d. Adding new paragraph (b) to read as follows:

§ 250.1503 What are my general responsibilities for training?

* * * * *

(b) If you conduct operations with a subsea BOP stack, your employees and contract personnel must be trained in deepwater well control. The trained employees and contract personnel must have a comprehensive knowledge of deepwater well control equipment, practices, and theory.

§ 250.1506 [Amended]

■ 22. In §§ 250.1506, amend paragraphs (a), (b), and (c) by removing the phrase "well control or production safety", and in its place adding the phrase "well control, deepwater well control, or production safety".

§ 250.1507 [Amended]

■ 23. In §§ 250.1507, amend paragraphs (c) and (d) by removing the phrase "well control and production safety", and in its place adding the phrase "well control, deepwater well control, and production safety".

■ 24. Amend § 250.1712 by,

■ a. Revising paragraph (e) and (f)(14); and

■ b. Adding new paragraph (g) to read as follows:

§ 250.1712 What information must I submit before I permanently plug a well or zone?

* * * * *

(e) A description of the work;

(f) * * *

(14) Your plans to protect archaeological and sensitive biological features, including anchor damage during plugging operations, a brief assessment of the environmental impacts of the plugging operations, and the procedures and mitigation measures you will take to minimize such impacts; and

(g) Certification by a Registered Professional Engineer of the well abandonment design and procedures; that there will be at least two

independent tested barriers, including one mechanical barrier, across each flow path during abandonment activities; and that the plug meets the requirements in the table in § 250.1715. The Registered Professional Engineer must be registered in a State in the United States. You must submit this certification with your APM (Form MMS–124).

■ 25. Amend § 250.1721 by:

■ a. Revising paragraphs (e) and (g)(3), and

■ b. Adding new paragraph (h) to read as follows:

§ 250.1721 If I temporarily abandon a well that I plan to re-enter, what must I do?

* * * * *

(e) Identify and report subsea wellheads, casing stubs, or other obstructions that extend above the mud line according to U.S. Coast Guard (USCG) requirements;

* * * * *

(g) * * *

(3) A description of any remaining subsea wellheads, casing stubs, mudline suspension equipment, or other obstructions that extend above the seafloor; and

(h) Submit certification by a Registered Professional Engineer of the well abandonment design and procedures; that there will be at least two independent tested barriers, including one mechanical barrier, across each flow path during abandonment activities; and that the plug meets the requirements in the table in § 250.1715. The Registered Professional Engineer must be registered in a State in the United States. You must submit this certification with your APM (Form MMS–124) required by § 250.1712.

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