7–12–10 Monday
Vol. 75 No. 132 July 12, 2010

Pages 39629–39786

Federal Register

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, July 13, 2010
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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Monday, July 12, 2010

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule Update

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Establishment of FOIA Fee Schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its Freedom of Information Act (FOIA) Fee Schedule Update pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations.

DATES: *Effective Date:* June 15, 2010.

FOR FURTHER INFORMATION CONTACT: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (202) 694–7060.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(i). On May 14, 2010 the Board published for comment in the **Federal Register** its Proposed FOIA Fee Schedule, 75 FR 27228. No comments were received in response to that notice, and the Board is now establishing the Fee Schedule.

Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. The previous Fee Schedule Update was published in the **Federal Register** and went into effect on May 1, 2009, 74 FR 20934.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

Search or Review Charge	$77.00 per hour.
Copy Charge (paper)	$.12 per page, if done in-house, or generally available commercial rate (approximately $.10 per page).
Electronic Media	$5.00.
Copy Charge (audio cassette)	$3.00 per cassette.
Duplication of DVD	$25.00 for each individual DVD; $16.50 for each additional individual DVD.
Copy Charge for large documents (*e.g.,* maps, diagrams).	Actual commercial rates.

Dated: July 2, 2010.

Brian Grosner,

General Manager.

[FR Doc. 2010–16919 Filed 7–9–10; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA–2009–1059; SFAR 106]

RIN 2120–AJ77

Use of One Additional Portable Oxygen Concentrator Device on Board Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Special Federal Aviation Regulation 106 (SFAR 106), Rules for Use of Portable Oxygen Concentrator Systems on Board Aircraft, to allow for the use of one additional portable oxygen concentrator (POC) device on board aircraft, provided certain conditions in the SFAR are met. This action is necessary to allow all POC devices deemed acceptable by the FAA for use in air commerce to be available to the traveling public in need of oxygen therapy. When this rule becomes effective, there will be 12 different POC devices the FAA finds acceptable for use on board aircraft. Passengers will be able to carry these devices on board the aircraft and use them with the approval of the aircraft operator.

DATES: This amendment becomes effective July 12, 2010.

FOR FURTHER INFORMATION CONTACT: DK Deaderick, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: 202–267–8166.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code (49 U.S.C.). 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.

The FAA is authorized to issue this final rule pursuant to 49 U.S.C. 44701. Under that section, the FAA is authorized to establish regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for air commerce and national security.

Background

On July 12, 2005, the FAA published Special Federal Aviation Regulation 106 (SFAR 106) entitled, "Use of Certain Portable Oxygen Concentrator Devices Onboard Aircraft" (70 FR 40156). SFAR 106 is the result of a notice the FAA published in July 2004 (69 FR 42324) to address the needs of passengers who

must travel with medical oxygen. Before publication of SFAR 106, passengers in need of medical oxygen during air transportation faced many obstacles when requesting service. Many aircraft operators did not provide medical oxygen service aboard flights, and those that did often provided service at a price that travelers could not afford. Coordinating service between operators and suppliers at airports was also difficult, and passengers frequently chose not to fly because of these difficulties.

New medical oxygen technologies approved by the Food and Drug Administration (FDA) reduce the risks typically associated with compressed oxygen and provide a safe alternative for passengers who need oxygen therapy. Several manufacturers have developed small portable oxygen concentrators (POC) that work by separating oxygen from nitrogen and other gases contained in ambient air and dispensing it in concentrated form to the user with an oxygen concentration of about 90%. The POCs operate using either rechargeable batteries or, if the aircraft operator obtains approval from the FAA, aircraft electrical power.

In addition, the Pipeline and Hazardous Materials Safety Administration (PHMSA) has determined that the POC covered by this amendment is not a hazardous material. Thus, it does not require the same level of special handling as compressed oxygen, and is safe for use on board aircraft, provided certain conditions for its use are met.

SFAR 106 permits passengers to carry on and use certain POCs on board aircraft if the aircraft operator ensures that the conditions specified in the SFAR for their use are met. The devices initially determined acceptable for use in SFAR 106, published July 12, 2005, were the *AirSep Corporation's LifeStyle* and the *Inogen, Inc.'s Inogen One* POCs. SFAR 106 was amended on September 12, 2006, (71 FR 53954) to add three additional POC devices, *AirSep Corporation's FreeStyle, SeQual Technologies' Eclipse,* and *Respironics Inc.'s EverGo,* to the original SFAR. SFAR 106 was amended on January 15, 2009, (74 FR 2351) in a similar manner to add two more POC devices, *Delphi Medical Systems' RS–00400* and *Invacare Corporation's XPO2,* to the original SFAR. The FAA again amended SFAR 106 on January 6, 2010 (75 FR 739) to add four more POC devices, *DeVilbiss Healthcare Inc.'s iGo, International Biophysics Corporation's LifeChoice, Inogen Inc.'s Inogen One G2,* and *Oxlife LLC.'s Oxlife Independence Oxygen Concentrator,* that may be carried on and used by a passenger on board an aircraft. This final rule adds one more POC device, *Invacare SOLO$_2$*, that may be carried on and used by a passenger on board an aircraft.

Aircraft operators can now offer medical oxygen service as they did before SFAR 106 was enacted, or they can meet certain conditions and allow passengers to carry on and use one of the POC devices covered in SFAR 106. SFAR 106 is an enabling rule, which means that no aircraft operator is required to allow passengers to operate these POC devices on board its aircraft, but it may allow them to be operated on board. If one of these devices is allowed by the aircraft operator to be carried on board, the conditions in the SFAR must be met.

When SFAR 106 was published, the FAA committed to establishing a single standard for all POCs so the regulations wouldn't apply to specific manufacturers and models of device. Whenever possible, the FAA tries to regulate by creating performance-based standards rather than approving by manufacturer. In the case of SFAR 106, the most efficient way to serve both the passenger and the aircraft operator was to allow the use of the devices determined to be acceptable by the FAA in SFAR 106 in a special, temporary regulation. As the FAA stated in the preamble discussion of the final rule that established SFAR 106, "while we are committed to developing a performance-based standard for all future POC devices, we do not want to prematurely develop standards that have the effect of stifling new technology of which we are unaware." The FAA developed and published SFAR 106 so passengers who otherwise could not fly could do so with an affordable alternative to what existed before SFAR 106 was published.

The FAA continues to pursue the performance-based standard for all POCs. This process is time-consuming, and the FAA intends to publish a notice in the Federal Register and offer the public a chance to comment on the proposal when it is complete. In the meantime, manufacturers continue to create new and better POCs, and one has requested that its product also be included as an acceptable device in SFAR 106. This manufacturer is Invacare Corporation, which has formally petitioned the FAA for inclusion in SFAR 106 by submitting documentation of the device to the Department of Transportation's Docket Management System. That documentation is available at *http://www.regulations.gov* under docket number: FAA–2009–1059.

As stated in Section 2 of SFAR 106, no covered device may contain hazardous materials as determined by PHMSA (written documentation necessary), and each device must also be regulated by the FDA. Invacare Corporation included technical specifications for the devices in its request for approval and the required documentation from PHMSA and the FDA. Invacare Corporation provided the FAA with the required documentation for the *Invacare SOLO$_2$* device.

The Rule

This amendment to SFAR 106 will include the *Invacare SOLO$_2$* device in the list of POC devices authorized for use in air commerce. The FAA has reviewed the device and accepted the documentation provided by the manufacturer. That documentation includes letters provided to the manufacturer by PHMSA and the FDA affirming the status of the device as it applies to the requirements stated in SFAR 106. After reviewing the applicable FDA safety standards and the PHMSA findings, the device was determined by the FAA to be acceptable for use in air commerce.

Additionally, the FAA inadvertently included an incorrect model number reference for one POC device in SFAR 106 that was added on January 15, 2009 (74 FR 2351). Therefore, the FAA is changing the reference from "Invacare XPO100" to "Invacare XP02."

Good Cause for Adoption of This Final Rule Without Notice and Comment

SFAR 106 was published on July 12, 2005. The FAA stated in the preamble of that final rule that the *AirSep LifeStyle* and *Inogen One* POC devices were the only known acceptable devices when the rule was published. The FAA also stated in that final rule that "we cannot predict how future products may be developed and work." The FAA initiated a notice and comment period for the use of POC devices on board aircraft on July 14, 2004, (69 FR 42324) and responded to the comments received in response to that NPRM in the final rule published in 2005. Therefore, it is unnecessary to publish a notice to request comments on this amendment because all issues related to the use of POC devices on board an aircraft have already been discussed. Further notice and comment would also delay the acceptance of the *Invacare SOLO$_2$* POC device as authorized for use on board aircraft, which would delay its availability for passengers in need of oxygen therapy.

Therefore, I find that notice and public comment under 5 U.S.C. 553(b)

is unnecessary and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon publication.

Paperwork Reduction Act

Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0702. This final rule requires that if a passenger carries a POC device on board the aircraft with the intent to use it during the flight, he or she must inform the pilot in command of that flight. Additionally, the passenger who plans to use the device must provide a written statement signed by a licensed physician that verifies the passenger's ability to operate the device, respond to any alarms, the extent to which the passenger must use the POC (all or a portion of the flight), and prescribes the maximum oxygen flow rate. The Paperwork Reduction Act paragraph in the final rule that established SFAR 106 still applies to this amendment. The availability of a new POC device will likely increase the availability and options for a passenger in need of oxygen therapy, but the paperwork burden discussed in the original final rule is unchanged. Therefore, the OMB Control Number associated with this collection remains 2120–0702.

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.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This action amends SFAR 106 to allow for the use of the *Invacare SOLO$_2$* POC device on board aircraft, provided certain conditions in the SFAR are met. This action is necessary to allow an additional POC device deemed acceptable by the FAA to be available to the traveling public in need of oxygen therapy, for use in air commerce. When this rule becomes effective, there will be a total of 12 different POC devices the FAA finds acceptable for use on board aircraft, and passengers will be able to carry these devices on board the aircraft and use them with the approval of the aircraft operator. As the rule increases acceptable POC devices on board aircraft, the rule does not increase costs and provides additional benefits. The FAA has, therefore, determined that this final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, and is not "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration." The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule adds *Invacare SOLO$_2$* device to the list of authorized POC devices in SFAR 106. This economic impact is minimal. Therefore, as the FAA Administrator, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $143.1 million in lieu of $100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action will

not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal at *http://www.regulations.gov;*

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends SFAR No. 106 to Chapter II of Title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 2. Amend SFAR 106 by revising sections 2 and 3(a) introductory text to read as follows:

Special Federal Aviation Regulation 106—Rules for use of Portable Oxygen Concentrator Systems on Board Aircraft

* * * * *

Section 2. *Definitions*—For the purposes of this SFAR the following definitions apply: Portable Oxygen Concentrator: means the *AirSep FreeStyle, AirSep LifeStyle, Delphi RS–00400, DeVilbiss Healthcare iGo, Inogen One, Inogen One G2, International Biophysics LifeChoice, Invacare XPO2, Invacare Solo$_2$, Oxlife Independence Oxygen Concentrator, Respironics EverGo,* and *SeQual Eclipse* Portable Oxygen Concentrator medical device units as long as those medical device units: (1) Do not contain hazardous materials as determined by the Pipeline and Hazardous Materials Safety Administration; (2) are also regulated by the Food and Drug Administration; and (3) assist a user of medical oxygen under a doctor's care. These units perform by separating oxygen from nitrogen and other gases contained in ambient air and dispensing it in concentrated form to the user.

Section 3. Operating Requirements—

(a) No person may use and no aircraft operator may allow the use of any portable oxygen concentrator device, except the *AirSep FreeStyle, AirSep LifeStyle, Delphi RS–00400, DeVilbiss Healthcare iGo, Inogen One, Inogen One G2, International Biophysics LifeChoice, Invacare XPO2, Invacare Solo$_2$, Oxlife Independence Oxygen Concentrator, Respironics EverGo,* and *SeQual Eclipse* Portable Oxygen Concentrator units. These units may be carried on and used by a passenger on board an aircraft provided the aircraft operator ensures that the following conditions are satisfied:

* * * * *

Issued in Washington, DC, on July 1, 2010.

J. Randolph Babbitt,

Administrator.

[FR Doc. 2010–16925 Filed 7–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0139]

RIN 1625–AA11

Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, Harvey Canal, Algiers Canal, New Orleans, LA; Correction

ACTION: Interim rule; Correction.

SUMMARY: In the **Federal Register** published on June 8, 2010, the Coast Guard placed the Interim Rule for the Regulated Navigation Area; Gulf Intracoastal Waterway, Inner Harbor Navigation Canal, Harvey Canal, Algiers Canal, New Orleans, LA into the Code of Federal Regulations. That publication contained an error in the **DATES** section, stating an incorrect May 21, 2010 effective date. This error does not impact the Interim Rule's correct May 24, 2010 effective date because the rule is to be enforced only 24 hours in advance of, and during the duration of specified predicted weather conditions. In fact, the conditions to enforce this rule between the published effective date and the correct effective date did not occur. But, this error may cause confusion among members of the public.

DATES: This correction is effective July 12, 2010.

FOR FURTHER INFORMATION CONTACT: For information about this correction, contact Kevin d'Eustachio, Office of Regulations and Administrative Law, telephone (202) 372–3854, e-mail *kevin.m.deustachio@uscg.mil.* For information about the original regulation, contact Lieutenant Commander (LCDR) Marty Daniels, Coast Guard; telephone (504) 565–5044, e-mail *William.M.Daniels@uscg.mil.*

SUPPLEMENTARY INFORMATION:

In FR Vol. 75, No. 109, USCG 2010–0139, appearing on page 32275 in the issue of Tuesday, June 8, 2010, the following correction is made:

1. On page 32275, in the third column, in the **DATES** section, remove "May 21, 2010" and add in its place "May 24, 2010".

Dated: June 30, 2010.

Kathryn Sinniger,

Acting Chief of the Office of Regulations and Administrative Law (CG–943), U.S. Coast Guard.

[FR Doc. 2010–16375 Filed 7–9–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2010–0473; FRL–9174–5]

Extension of Deadline for Action on Section 126 Petition From New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is extending by 6 months the deadline for EPA to take action on a petition submitted by the New Jersey Department of Environmental Protection (NJDEP). The petition requests that EPA make a finding under the Clean Air Act (CAA) that the coal-fired Portland Generating Station in Upper Mount Bethel Township, Northampton County, Pennsylvania, is emitting air pollutants in violation of the provisions of the CAA. Under the CAA, EPA is authorized to grant a time extension for responding to the petition if EPA determines that the extension is necessary, among other things, to meet the purposes of the CAA's rulemaking requirements. By this action, EPA is making that determination.

DATES: The effective date of this action is July 12, 2010.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID number EPA–HQ–OAR–2010–0473. 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, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center EPA/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: General questions concerning this final rule should be addressed to Ms. Gobeail McKinley, Office of Air Quality Planning and Standards, Geographic Strategies Group, Mail Code C539–04, Research Triangle Park, NC 27711; telephone (919) 541–5246; e-mail address: *mckinley.gobeail@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

This is a procedural action to extend the deadline for EPA to respond to a petition from New Jersey filed under CAA section 126. EPA received the section 126 petition on May 13, 2010. The petition requests that EPA make a finding that the coal-fired Portland Generating Station (Portland Plant) in Upper Mount Bethel Township, Northampton County, Pennsylvania, is emitting air pollutants in violation of the provisions of section 110(a)(2)(D)(i) of the CAA. That section provides that each state's State Implementation Plan (SIP) shall contain adequate provisions prohibiting emissions of any air pollutant in amounts which will contribute significantly to nonattainment in, or interfere with maintenance by, any other state with respect to any national ambient air quality standard (NAAQS). The petition asserts that emissions from the Portland Plant have a significant impact on New Jersey's air quality and that this impact would be mitigated by further regulation of fine particulate matter and sulfur dioxide emissions from this plant. Section 126(b) authorizes states or political subdivisions to petition EPA to find that a major source or group of stationary sources in upwind states emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(D) by contributing significantly to nonattainment or maintenance problems in downwind states. If EPA makes such a finding, EPA is authorized to establish federal emissions limits for the sources which so contribute.

Under section 126(b), EPA must make the finding requested in the petition, or must deny the petition within 60 days of its receipt. Under section 126(c), any existing sources for which EPA makes the requested finding must cease operations within three months of the finding, except that the source may continue to operate if it complies with emission limitations and compliance schedules that EPA may provide to bring about compliance with the applicable requirements.

Section 126(b) further provides that EPA must allow a public hearing for the petition. EPA's action under section 126 is also subject to the procedural requirements of CAA section 307(d). *See* section 307(d)(1)(N). One of these requirements is notice-and-comment rulemaking, under section 307(d)(3).

In addition, section 307(d)(10) provides for a time extension, under certain circumstances, for rulemaking subject to section 307(d). Specifically, section 307(d)(10) provides:

> Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of the subsection.

Section 307(d)(10) applies to section 126 rulemakings because the 60-day time limit under section 126(b) necessarily limits the period after proposal to less than six months.

II. Final Action

A. Rule

In accordance with section 307(d)(10), EPA is determining that the 60-day period afforded by section 126(b) for

responding to the petition from the NJDEP is not adequate to allow the public and the Agency the opportunity to carry out the purposes of section 307(b). Specifically, the 60-day period is insufficient for EPA to complete the necessary technical review, develop an adequate proposal and allow time for notice and comment on whether the Portland Plant identified in the section 126 petition contributes significantly to nonattainment or maintenance problems in New Jersey. EPA has reviewed the petition and supporting technical information provided by NJDEP, and has scheduled a meeting with NJDEP officials to further understand the technical information. Additional time is required to afford EPA adequate time to further review and evaluate the basis for the petition, prepare a proposal that clearly elucidates the issues to facilitate public comment, and provide adequate time for the public to comment prior to issuing the final rule. As a result of this extension, the deadline for EPA to act on the petition is January 12, 2011.

B. Notice-and-Comment Under the Administrative Procedures Act (APA)

This document is a final agency action, but may not be subject to the notice-and-comment requirements of the APA, 5 U.S.C. 553(b). The EPA believes that, because of the limited time provided to make a determination that the deadline for action on the section 126 petition should be extended, Congress may not have intended such a determination to be subject to notice-and-comment rulemaking. However, to the extent that this determination otherwise would require notice and opportunity for public comment, there is good cause within the meaning of 5 U.S.C. 553(b)(3)(B) not to apply those requirements here. Providing for notice and comment would be impracticable because of the limited time provided for making this determination, and would be contrary to the public interest because it would divert Agency resources from the substantive review of the section 126 petition.

C. Effective Date Under the APA

This action is effective on July 12, 2010. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if the agency has good cause to mandate an earlier effective date. This action—a deadline extension—must take effect immediately because its purpose is to extend by 6 months the deadline for action on the petition. It is important for this deadline extension action to be effective before the original 60-day period for action elapses. As discussed above, EPA intends to use the 6-month extension period to develop a proposal on the petition and provide time for public comment before issuing the final rule. It would not be possible for EPA to complete the required notice-and-comment and public hearing process within the original 60-day period noted in the statute. These reasons support an immediate effective date.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review by the Office of Management and Budget under the Executive Order.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320(b). This action simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Therefore, it does not impose an information collection burden.

C. Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice-and-comment requirements under the APA or any other statute because, although the rule is subject to the APA, the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b). Therefore, it is not subject to the notice-and-comment requirement.

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 (URMA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. This action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

This action simply extends the deadline for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA. This action is also not subject to the requirements of section 203 of URMA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any small governments.

E. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (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" is 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 action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule simply extends the date for EPA to take action on a petition and does not impose any new obligations or enforceable duties on any state, local or tribal governments or the private sector. 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). It will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. This action does not significantly or uniquely affect the communities of Indian tribal governments. As discussed

above, this action imposes no new requirements that would impose compliance burdens. Accordingly, the requirements of Executive Order 13175 do not apply to this rule.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule simply extends the deadline for EPA to take action on a petition and does not impose any regulatory requirements.

H. Executive Order 13211: Actions Concerning Regulations 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. Further, we have concluded that this rule is not likely to have any adverse effects because this action simply extends the deadline for EPA to take action on a petition.

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, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* 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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it simply extends the deadline for EPA to take action on a petition and does not impose any regulatory requirements.

K. Congressional Review Act

The Congressional Review Act (CRA), 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. Section 808 of the CRA provides an exception to this requirement. For any rule for which an agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest, the rule may take effect on the date set by the Agency. The 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**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

L. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: July 2, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–16890 Filed 7–9–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0730; FRL–9172–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin; Redesignation of the Manitowoc County and Door County Areas to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving Wisconsin's requests to redesignate the Manitowoc County and Door County, Wisconsin nonattainment areas to attainment for the 1997 8-hour ozone standard because the requests meet the statutory requirements for redesignation under the Clean Air Act (CAA). The Wisconsin Department of Natural Resources (WDNR) submitted these requests on September 11, 2009.

These approvals involve several related actions. EPA is making determinations under the CAA that the Manitowoc County and Door County areas have attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). These determinations are based on three years of complete, quality-assured and certified ambient air quality monitoring data for the 2006–2008 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the areas. Complete, quality-assured air quality data for the 2009 ozone season have been recorded in the EPA's Air Quality System (AQS) and show that the areas continue to attain the 8-hour ozone standard. EPA is also approving, as revisions to the Wisconsin State Implementation Plan (SIP), the State's

plans for maintaining the 8-hour ozone NAAQS through 2020 in the areas.

EPA is approving the 2005 base year emissions inventories for the Manitowoc County and Door County areas as meeting the base year emissions inventory requirement of the CAA. WDNR submitted these base year emissions inventories on June 12, 2007. Finally, EPA finds adequate and is proposing to approve the State's 2012 and 2020 Motor Vehicle Emission Budgets (MVEBs) for the Manitowoc County and Door County areas.

DATES: This final rule is effective July 12, 2010.

ADDRESSES: EPA has established a docket for this action: Docket ID No. EPA–R05–OAR–2009–0730. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

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

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I. What is the background for these actions?

The background for today's actions is discussed in detail in EPA's April 27, 2010, proposal (75 FR 22047). In that rulemaking, we noted that, under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm. (See 69 FR 23857 (April 30, 2004) for further information.) Under the CAA, EPA may redesignate nonattainment areas to attainment if sufficient complete, quality-assured data are available to determine that the area has attained the standard and if it meets the other CAA redesignation requirements in section 107(d)(3)(E).

The WDNR submitted requests to redesignate the Manitowoc County and Door County areas to attainment for the 1997 8-hour ozone standard on September 11, 2009. The redesignation requests included three years of complete, quality-assured data for the period of 2006 through 2008, indicating the 8-hour NAAQS for ozone, as promulgated in 1997, had been attained for the Manitowoc County and Door County areas. Complete, quality-assured monitoring data in AQS but not yet certified for the 2009 ozone season show that the areas continue to attain the 8-hour ozone standard. The April 27, 2010, proposed rule provides a detailed discussion of how Wisconsin met this and other CAA requirements.

II. What comments did we receive on the proposed rule?

EPA provided a 30-day review and comment period. The comment period closed on May 27, 2010. EPA received comments in support of the redesignation from the Door County Board of Supervisors and the Door County Economic Development Corporation. We received no adverse comments on the proposed rule.

III. What action is EPA taking?

EPA is making determinations that the Manitowoc County and Door County areas have attained the 1997 8-hour ozone NAAQS. EPA is also approving the maintenance plan SIP revisions for the Manitowoc County and Door County areas. EPA's approval of the maintenance plans is based on the State's demonstrations that the plans meet the requirements of section 175A of the CAA. After evaluating the redesignation requests submitted by WDNR, EPA believes that the requests meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is approving the redesignation of the Manitowoc County and Door County areas from nonattainment to attainment for the 1997 8-hour ozone NAAQS. EPA is also approving WDNR's 2005 base year emissions inventory for the Manitowoc County and Door County areas as meeting the requirements of section 172(c)(3) of the CAA. Finally, EPA finds adequate and is approving the Wisconsin's 2012 and 2020 MVEBs for the Manitowoc County and Door County areas.

In accordance with 5 U.S.C. 553(d), EPA finds there is good cause for this action to become effective immediately upon publication. This is because a delayed effective date is unnecessary due to the nature of a redesignation to attainment, which relieves the area from certain CAA requirements that would otherwise apply to it. The immediate effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rulemaking actions may become effective less than 30 days after publication if the rule "grants or recognizes an exemption or relieves a restriction," and section 553(d)(3), which allows an effective date less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Today's rule, however, does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. Rather, today's rule relieves the state of various requirements for this 8-hour ozone nonattainment area. For these reasons, EPA finds good cause under 5 U.S.C. 553(d)(3) for this action to become effective on the date of publication of this action.

IV. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. Even though this rule does not have "tribal implications" under Executive Order 13175, nonetheless, EPA provided notice of the proposal to the Wisconsin tribes. The tribes raised no concerns with the proposed rule.

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 10, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: June 28, 2010.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart YY—Wisconsin

■ 2. Section 52.2585 is amended by adding paragraphs (w) and (x) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(w) Approval—On June 12, 2007, Wisconsin submitted 2005 VOC and NO_X base year emissions inventories for the Manitowoc County and Door County areas. Wisconsin's 2005 inventories satisfy the base year emissions inventory requirements of section 172(c)(3) of the Clean Air Act for the Manitowoc County and Door County areas under the 1997 8-hour ozone standard.

(x) Approval—On September 11, 2009, Wisconsin submitted requests to redesignate the Manitowoc County and Door County areas to attainment of the 1997 8-hour ozone standard. As part of the redesignation requests, the State submitted maintenance plans as required by section 175A of the Clean Air Act. Elements of the section 175 maintenance plans include contingency plans and an obligation to submit subsequent maintenance plan revisions in 8 years as required by the Clean Air Act. The ozone maintenance plans also establish 2012 and 2020 Motor Vehicle Emission Budgets (MVEBs) for the areas. The 2012 MVEBs for the Manitowoc County and Door County areas are 1.76 tons per day (tpd) for VOC and 3.76 tpd for NO_X, and 0.78 tpd for VOC and 1.55 tpd for NO_X, respectively. The 2020 MVEBs for the Manitowoc County and Door County areas are 1.25 tpd for VOC and 1.86 tpd for NO_X, and 0.53 tpd for VOC and 0.74 tpd for NO_X, respectively.

PART 81—[AMENDED]

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

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

■ 2. Section 81.350 is amended by revising the entries for Door County, WI and Manitowoc County, WI in the table entitled "Wisconsin-Ozone (8–Hour Standard)" to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN-OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Classification	
	Date [1]	Type	Date [1]	Type
Door County, WI: Door County	July 12, 2010	Attainment.		
* * *	*	* *	*	*
Manitowoc County, WI: Manitowoc County	July 12, 2010	Attainment.		
* * *	*	* *	*	*

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

* * * * *

[FR Doc. 2010–16706 Filed 7–9–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 0911051395–0252–02]

RIN 0648–AY32

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Ecosystem-Based Amendment 1 for the South Atlantic Region; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final rule to implement Comprehensive Ecosystem-Based Amendment 1 for the South Atlantic region that published in the **Federal Register** Tuesday, June 22, 2010.

DATES: This correction is effective July 22, 2010.

FOR FURTHER INFORMATION CONTACT: Scott Sandorf, 727–824–5305; fax: 727–824–5308; e-mail: *scott.sandorf@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Need for Correction

On June 22, 2010, (75 FR 35330, June 22, 2010) an incorrect coordinate for Point 76, in § 622.35 (n)(1)(iii)(A) and an incorrect latitudinal symbol for Point 8, in § 622.35 (n)(1)(iv)(A) were published. This document corrects these coordinates.

■ 1. On page 35333, in the first column, under § 622.35 (n)(1)(iii)(A), the Point 76 coordinate is corrected to read as follows:

§ 622.35 Atlantic EEZ seasonal and and/or area closures.

* * * * *

(n) * * *

(1) * * *

(iii) * * *

(A) * * *

Point	North lat.	West long.
* * *	* * *	*
76	30°59′50″	79°42′43″
* * *	* * *	*

■ 2. On page 35333, in the third column, under § 622.35 (n)(1)(iv)(A), the Point 8 coordinate is corrected to read as follows:

§ 622.35 Atlantic EEZ seasonal and/or area closures.

* * * * *

(n) * * *

(1) * * *

(iv) * * *

(A) * * *

Point	North lat.	West long.
* * *	* * *	*
8	24°10′55″	80°58′11″

* * * * *

Dated: July 6, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–16934 Filed 7–9–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XX48

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of 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 northern rockfish by catcher/processors participating in the limited access or opt-out fisheries that are subject to sideboard limits established under the Central Gulf of Alaska (GOA) Rockfish Program in the Western Regulatory Area of the GOA. This action is necessary to prevent exceeding the 2010 sideboard limit of northern rockfish established for catcher/processors participating in the limited access or opt-out fisheries in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 7, 2010, through 1200 hrs, A.l.t., July 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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 northern rockfish sideboard limit established for catcher/processors participating in the limited access or opt-out fisheries that are subject to sideboard limits in the Central GOA Rockfish Program in the Western Regulatory Area is 159 metric tons (mt). The sideboard limit is established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010) and as posted as the 2010 Rockfish Program Catcher/Processor Sideboards at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm*.

In accordance with § 679.82(d)(7)(i)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 northern rockfish sideboard limit established for catcher processors participating in the limited access or opt-out fisheries in the Western Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 139 mt, and is setting aside the remaining 20 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.82(d)(7)(ii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the northern rockfish sideboard limit established for catcher/processors participating in the limited access or opt-out fisheries in the Western Regulatory Area.

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 northern rockfish sideboard limit for catcher/processors participating in the limited access or opt-out fisheries in the Western Regulatory Area. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 6, 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 § 679.82 and is exempt from review under Executive Order 12866.

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

Dated: July 7, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–16916 Filed 7–7–10; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0910131362–0087–02]

RIN 0648–XX49

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Western Regulatory Area of 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 pelagic shelf rockfish by catcher/processors participating in the limited access or opt-out fisheries that are subject to sideboard limits established under the Central Gulf of Alaska (GOA) Rockfish Program in the Western Regulatory Area of the GOA. This action is necessary to prevent exceeding the 2010 sideboard limits of pelagic shelf rockfish established for catcher/processors participating in the limited access or opt-out fisheries in the Western Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 7, 2010, through 1200 hrs, A.l.t., July 31, 2010.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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 pelagic shelf rockfish sideboard limit established for catcher/processors participating in the limited access or opt-out fisheries that are subject to sideboard limits in the Central GOA Rockfish Program in the Western Regulatory Area is 36 mt. The sideboard limit is established by the final 2010 and 2011 harvest specifications for groundfish of the GOA (75 FR 11749, March 12, 2010) and as posted as the 2010 Rockfish Program Catcher/Processor Sideboards at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm*.

In accordance with § 679.82(d)(7)(i)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2010 pelagic shelf rockfish sideboard limit established for catcher/processors participating in the limited access or opt-out fisheries in the Western Regulatory Area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 26 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.82(d)(7)(ii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for the pelagic shelf rockfish sideboard limit established for catcher/processors participating in the limited access or opt-out fisheries in the Western Regulatory Area.

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 pelagic shelf rockfish sideboard limit for catcher/processors participating in the limited access or opt-out fisheries in the Western Regulatory Area. NMFS was

unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 6, 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 § 679.82 and is exempt from review under Executive Order 12866.

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

Dated: July 7, 2010.

Carrie Selberg,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–16913 Filed 7–7–10; 4:15 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 132
Monday, July 12, 2010

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

42 CFR Part 488

[CMS–2435–P]

Medicare and Medicaid Programs; Civil Money Penalties for Nursing Homes

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise and expand current Medicare and Medicaid regulations regarding the imposition and collection of civil money penalties by CMS when nursing homes are not in compliance with Federal participation requirements in accordance with the Patient Protection and Affordable Care Act of 2010.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. EST on August 11, 2010.

ADDRESSES: In commenting, please refer to file code CMS–2435–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the instructions under the "More Search Options" tab.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2435–P, P.O. Box 8012, Baltimore, MD 21244–8012.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2435–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Lori Chapman, (410) 786–9254.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that Web site to view public comments. Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background

To participate in the Medicare program or the Medicaid program, or both, long-term care facilities must be certified as meeting Federal participation requirements. Long-term care facilities include skilled nursing facilities (SNFs) for Medicare and nursing facilities (NFs) for Medicaid. The Federal participation requirements for these facilities, generally referred to as "nursing home(s)," "facility" or "facilities" in this proposed rule, are specified in regulations at 42 CFR part 483, subpart B.

Section 1864(a) of the Social Security Act (the Act) authorizes the Secretary to enter into agreements with State survey agencies to determine whether facilities meet the Federal participation requirements for Medicare. Section 1902(a)(33)(B) of the Act provides for State survey agencies to perform the same survey tasks for facilities participating or seeking to participate in the Medicaid program. The results of Medicare and Medicaid related surveys are used by CMS and the State Medicaid agency, respectively, as the basis for a decision to enter into or deny a provider agreement, recertify facility participation in one or both programs, or terminate the facility from the program. They are also used to determine whether one or more enforcement remedies should be imposed where noncompliance with Federal requirements is identified.

To assess compliance with Federal participation requirements, surveyors conduct onsite inspections (surveys) of facilities. In the survey process, surveyors directly observe the actual provision of care and services to residents and the effect or possible effects of that care to assess whether the care provided meets the assessed needs of individual residents.

Among the statutory enforcement remedies available to the Secretary and the States to address facility noncompliance are civil money penalties. Authorized by sections 1819(h) and 1919(h) of the Act, civil money penalties may be imposed for each day or each instance of facility noncompliance, as well as for past instances of noncompliance even if a facility is in compliance at the time of the current survey. The regulations that govern the imposition of civil money penalties, as well as other enforcement remedies authorized by the statute, were published in the **Federal Register** on November 10, 1994 (59 FR 56116),and on March 18, 1999 (64 FR 13354). These rules are set forth at 42 CFR Part 488, Subpart F, and the provisions directly affecting civil money penalties are set forth at § 488.430 through § 488.444.

A per day civil money penalty may be imposed from $50 up to $10,000 for each day of noncompliance. An upper civil money penalty range of $3,050 up to $10,000 per day may be imposed for noncompliance that constitutes immediate jeopardy, meaning the noncompliance has caused or is likely to cause serious injury, harm, impairment or death to a resident, and as specified in § 488.438(d)(2) for repeat deficiencies. A lower range of $50 up to $3,000 per day may be imposed for noncompliance that does not constitute immediate jeopardy. The current regulations at § 488.438(a)(2) also specify that a civil money penalty may be imposed per instance of facility noncompliance in the range of $1,000 to $10,000 per instance. Current regulations at § 488.438(f)(2) also provide that, among other factors, a facility's financial condition will be considered when determining the amount of a civil money penalty.

Facilities that are dissatisfied with a certification of noncompliance have an informal opportunity, if they request it, to dispute cited deficiencies upon receipt of the official statement of deficiencies. For surveys conducted pursuant to section 1864 of the Act, this informal dispute resolution process is provided by the State. The requirement for informal dispute resolution is currently specified at § 488.331. Policy guidance in section 7212C of CMS's *State Operations Manual* (Pub. L. 100–07) specifies the mandatory elements that must be included in each State's informal dispute resolution process. While States have the option to involve outside persons or entities that they believe to be qualified to participate in the informal dispute resolution process, it is the States, not the outside individuals or entities that are responsible and accountable for the informal dispute resolution decisions. Further, when a facility is successful during the informal dispute resolution process at demonstrating that deficiencies should not have been cited, and CMS accepts these informal dispute resolution findings, the deficiency is or deficiencies are removed from the Statement of Deficiencies. Any enforcement sanctions, not only a civil money penalty, that were imposed as a result of those removed deficiencies are rescinded and adjusted accordingly.

When civil money penalties are imposed by the State and CMS for a determination of noncompliance with nursing home participation requirements and the facility requests a hearing on that determination, a civil money penalty is not currently due and collectible under § 488.432 until after the facility has had an opportunity for an administrative hearing and received a final agency decision about the noncompliance upon which the penalty was imposed. Only with respect to civil money penalties does the Act specify that a nursing home provider would be entitled to a hearing before an adverse action is taken against it. Aside from this one exception for civil money penalties, as provided in section 1128A of the Act, appeal procedures for both the Medicare and Medicaid programs provide the opportunity for formal relief only after enforcement sanctions have taken effect. Indeed, sections 1819(h)(5) and 1919(h)(8) of the Act specifically state that the remedies permitted under the statute may be imposed during the pending of any hearing. This is consistent with the intent of the enforcement provisions which is to impose remedies as soon as possible in order to protect the residents.

Regulations at § 488.436 provide that a facility may waive its right to a hearing within specified timeframes and procedures and, as a result, will have the civil money penalty reduced by 35 percent. This reduction is intended to encourage facilities to carefully consider their position in terms of substantial compliance, as well as the costs they will incur in litigating the matter, before engaging the hearing process. Reducing a civil money penalty by 35 percent is based on the recognition that a legal challenge is costly to both the provider and to CMS.

Current regulations at § 488.432 specify when the civil money penalty is collected, based on whether or not a hearing is requested:

- When a facility appropriately requests a hearing, in accordance with specified procedures, on the determination of noncompliance that is the basis for a per day civil money penalty, the penalty is collected when there is a final administrative decision that upholds the State's or CMS's determination after the facility achieves substantial compliance or is terminated.
- When a facility does not request a hearing, in accordance with specified procedures, on the determination of noncompliance that is the basis for a per day civil money penalty, the penalty is collected when the facility achieves substantial compliance or is terminated.
- When a facility waives its right to a hearing, in accordance with specified procedures, on the determination of noncompliance that is the basis for a per day civil money penalty, the penalty is collected when the facility achieves substantial compliance or is terminated.
- When a facility appropriately requests a hearing, in accordance with specified procedures, on the determination of noncompliance that is the basis for a per instance civil money penalty, the penalty is collected when there is a final administrative decision that upholds the State's or CMS's determination of noncompliance.
- When a facility does not request a hearing, in accordance with specified procedures, on the determination of noncompliance that is the basis for a per instance civil money penalty, the penalty is collected when the time frame for requesting a hearing expires.
- When a facility waives its right to a hearing, in accordance with specified procedures, on the noncompliance that is the basis for a per instance civil money penalty, the penalty is collected upon receipt of the facility's notification.

As specified in section 1128A(f) of the Act, which is incorporated in sections 1819(h) and 1919(h) of the Act, and consistent with the way other civil money penalties are recovered, monies collected by CMS are returned to the State in proportion commensurate with the relative proportion of Medicare and Medicaid beds at the facility in use by residents of the respective programs on the date the civil money penalty begins to accrue, and remaining funds are deposited as miscellaneous receipts of the United States Department of the Treasury. Section 1919(h)(2)(A)(ii) of the Act specifies that civil money penalties collected by the State must be applied to the protection of the health or property of residents of any nursing facility that the State or CMS finds deficient, including payment for the cost of relocating residents to other facilities, maintenance of operation of a facility pending correction of deficiencies or closure, and

reimbursement of residents for personal funds lost.

II. Provisions of the Proposed Regulations

Section 6111 of the Patient Protection and Affordable Care Act (the Affordable Care Act) (Pub. L. 111–148), enacted on March 23, 2010, amended sections 1819(h) and 1919(h) of the Act to incorporate specific provisions pertaining to the imposition and collection of civil money penalties when facilities do not meet Medicare and Medicaid participation requirements.

We believe that through these new statutory provisions, Congress has expressed its intent to improve efficiency and effectiveness of the nursing home enforcement process, particularly as it relates to civil money penalties imposed by CMS.

Section 6111 of the Affordable Care Act provides the Secretary discretion to reduce the amount of a civil money penalty by not more than 50 percent in cases where a facility self-reports and promptly corrects a deficiency for which a penalty was imposed within ten calendar days of the date of imposition. However, the Secretary may not reduce the civil money penalty if either of the following is true: (1) The Secretary has reduced a civil money penalty imposed in the preceding year under this provision with respect to a repeat deficiency; or (2) the penalty is imposed on the facility for a deficiency that is found to result in a pattern of harm or widespread harm, immediately jeopardizes the health or safety of a resident or residents, or results in the death of a resident of the facility. Section 6111 of the Affordable Care Act also requires the Secretary to issue regulations that provide facilities an opportunity to participate in an independent informal dispute resolution process prior to the collection of a civil money penalty, allows for the collection and deposit of a civil money penalty in an escrow account prior to the resolution of any formal appeals, provides for return of escrowed civil money penalty funds in cases where a nursing home is successful in a formal appeal, and allows for a portion of the retained penalty funds pertinent to Medicare to support activities that benefit residents.

These provisions in section 6111 of the Affordable Care Act seek to reduce the delay which results between the identification of problems with noncompliance and the effect of certain penalties that are intended to motivate a nursing home to maintain continuous compliance with basic expectations regarding the provision of quality care and eliminate a facility's ability to significantly defer the direct financial effect of an applicable civil monetary penalty until after an often long litigation process.

To implement these new statutory provisions, we are proposing to revise 42 CFR part 488 by adding new § 488.431 and § 488.433. We are also proposing revisions to existing regulations throughout part 488 to further incorporate the new statutory provisions. These proposed changes would be consistent with Section 6111 of the Affordable Care Act. Specifically, this proposed rule would allow for civil money penalty reductions when facilities self-report and promptly correct their noncompliance; offer in cases where civil money penalties are imposed an independent informal dispute resolution process where interests of both facilities and residents are represented and balanced; provide for the establishment of an escrow account where civil money penalties may be placed until any applicable administrative appeal processes have been completed; and, improve the extent to which civil money penalties collected from Medicare facilities can benefit nursing home residents. Through the proposed revisions, we intend to directly promote and improve the health, safety, and overall well-being of residents.

A. Proposed Establishment of an Escrow Account for Civil Money Penalties

Under the existing process, facilities are able to avoid paying a civil money penalty for years because it can often take a long time for administrative appeals to be completed. Concerns about the delays in payment of a civil money penalty have been raised in independent reports issued by both the United States Government Accountability Office (GAO) and the Office of the Inspector General of the Department of Health and Human Services (OIG). These referenced reports are identified as GAO–07–241, "Efforts to Strengthen Federal Enforcement Have Not Deterred Some Homes from Repeatedly Harming Residents," (March 2007), and OEI–06–02–00720, "Nursing Home Enforcement: The Use of Civil Money Penalties," (April 2005). Both GAO and OIG studied the civil money penalty collection process for nursing homes. Each concluded that the significant time that can elapse between identification of noncompliance and the facility's payment of an imposed civil money penalty diminishes the immediacy of the enforcement response, insulates the facility from the repercussions of enforcement, and may undermine the sanction's deterrent effect. For example, the OIG reported that, in the cases they reviewed, collection of civil money penalties in appealed cases took an average of 420 days. As a result of its own independent study, GAO recommended that CMS seek a legislative change that would allow for the collection of civil money penalties before exhaustion of appeals.

Sections 6111(a) and (b) of the Affordable Care Act created new authorities at sections 1819(h) and 1919(h) of the Act that now permit the Secretary to collect and place civil money penalties into an escrow account pending the resolution of any formal appeal. We believe that through the passage of this specific provision and the creation of an exception to current collection timeframe for civil money penalties imposed by CMS, the Congress expressed its intent to address the current delay in collection of civil money penalties and mitigate the deleterious effect of such delays that the GAO and OIG identified in their reports.

Specifically, sections 6111(a) and (b) of the Affordable Care Act expand sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Act by adding a new subsection (IV)(bb) which states that, in the case of per day civil money penalties, the penalty will not be imposed until after a facility has had an opportunity for an independent informal dispute resolution process by which the facility may informally challenge the noncompliance on which the penalty was based. (The added provisions regarding the new independent informal dispute resolution process are discussed later in section II–C. of this preamble.)

In the proposed rule, we interpret the language of this new section (IV)(bb) to mean that any per day civil money penalty would be effective and continue to accrue but would not be collected during the time that the determination of noncompliance which led to the imposition of a civil money penalty is subject to the independent informal dispute resolution process. This is consistent with other provisions of Section 6111 of the Affordable Care Act and when viewed in the context of the purpose of the enforcement process of the Social Security Act. First, new subsection (IV)(cc) of sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii), as amended by section 6111 of the Affordable Care Act, provide for the collection of the civil money penalty upon completion of an independent informal dispute resolution process. If the per day civil money penalty did not apply and accrue during the period of

an independent informal dispute resolution process, there would not be any civil money penalty funds to collect upon completion of the process in those cases where the dispute resolution does not result in any change to the findings. In those cases where this independent informal dispute resolution process does result in a change to the findings that would lower the civil money penalty amounts, then the accrual would be immaterial because the civil money penalties were reduced or rescinded back to the effective date of the civil money penalty. Second, it has been CMS' longstanding position that sections 1819(h) and 1919(h) of the Act provide that a per day civil money penalty can begin to accrue as early as the date that a facility was first determined to be out of compliance and continues to accrue, without interruption, until a facility has achieved substantial compliance or is terminated from the program. Additionally, the Act also provides that the effective date of a civil money penalty can be retroactive to the date of an adverse event that was documented through the survey process to have occurred prior to the issuance of a formal written notice informing the facility that a per day civil money penalty has been applied. Section 6111 of the Affordable Care Act does not change the existing nursing home enforcement process; rather it adds an additional process to be available to facilities as a result of the Secretary's new authority to collect a civil money penalty before exhaustion of administrative remedies. Third, since a facility may continue to be out of substantial compliance for a period of time until it is terminated from the program, an interruption in the civil money penalty accrual would be contrary to the intended effect of creating financial incentives for facilities to maintain compliance and promptly correct any noncompliance. Since we believe Congress intended to speed and strengthen the motivational and deterrent effects of civil money penalties, we believe that suspending the accrual of a civil money penalty while the underlying noncompliance was being informally challenged would undermine such motivational effects.

We therefore propose that CMS will not collect applicable civil money penalty funds until either an independent informal dispute resolution process is completed or 90 days has passed since the notice of civil money penalty imposition has been issued, whichever is earlier. The 90 day period is the maximum combined time period permitted from the date of the notice of civil money penalty imposition (when a facility has the opportunity to request an independent informal dispute resolution) to the date for completion of the independent informal dispute resolution process itself. This combined maximum time period is consistent with the provisions of new sections 1819(h)(2)(B)(ii)(IV)(cc) and 1919(h)(3)(C)(ii)(IV)(cc) of the Act, as amended by section 6111 of the Affordable Care Act (which is discussed in more detail below).

1. Collection and Placement in Escrow Account

Sections 6111(a) and (b) of the Affordable Care Act add new sections 1819(h)(2)(B)(ii)(IV)(cc) and 1919(h)(3)(C)(ii)(IV)(cc) of the Act which provide the authority for CMS to collect and place into escrow accounts civil money penalties. This may be done on the earlier of (1) the date when a requested independent informal dispute resolution process is completed, or (2) 90 days after imposition of the civil money penalty. We are proposing to implement these requirements at § 488.431(b)(1)(i) and § 488.431(b)(1)(ii). While the amended statutory language contemplates that a facility will be either wholly successful or unsuccessful in challenging its determination of noncompliance during the independent informal dispute resolution process, the proposed regulation reflects an understanding that there are times when a facility is partly successful. In such instances, the facility may be able to argue successfully for change to only some of its cited noncompliance. If such change as a result of the independent informal dispute resolution were to affect the civil money penalty amounts owed, (for example, through deletion of a germane deficiency), then the amount initially imposed would need to be adjusted accordingly before being collected and placed in the escrow account.

2. When a Facility Is Successful in a Formal Administrative Appeal

Sections 6111(a) and (b) of the Affordable Care Act amend sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Act by adding new section (IV)(dd) which provides that collected civil money penalties will be kept in an escrow account pending the resolution of any subsequent formal appeals (as distinct from an informal dispute resolution process). Sections 6111(a) and (b) of the Affordable Care Act also adds new section (IV)(ee) to revise sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Act, to require that when a final administrative decision results in the successful appeal of a facility's cited determination of noncompliance that led to the imposition of the civil money penalty, that civil money penalty amount being held in escrow will then be returned to the facility, with interest. We are proposing at § 488.431(d)(2) that if the administrative law judge (ALJ) reverses the civil money penalty determination in whole or in part, the escrowed amount continues to be held pending expiration of the time for CMS to appeal the ALJ decision or, where CMS does appeal, a Departmental Appeals Board decision affirming the ALJ's reversal of the civil money penalty. We are proposing to implement these new requirements at proposed § 488.431(d). We believe these new statutory provisions contemplate not only an absolute situation where the facility is either wholly successful or unsuccessful in its administrative appeal of a determination which led to a civil money penalty imposition, but that they also include situations in which a facility is only partially successful in its appeal. Thus, the proposed regulation recognizes this possibility and provides that CMS will return collected civil money penalty amounts commensurate with the final administrative appeal results.

We do not plan to include specifics in this proposed rule about how these requirements would be operationalized because we believe that such guidance is more appropriately suited for inclusion in our *State Operations Manual* after collaboration with interested stakeholders. However, we do expect that the collection of a per day civil money penalty under this proposed rule may be a two-step process. In proposed § 488.431(b)(2),we expect that in instances when a facility has not achieved substantial compliance at the time a per day civil money penalty can be collected and placed in an escrow account, that collection would consist of the penalty amount that has accrued from the effective date of the penalty through the date of collection. Another collection would need to occur later in the process for any final balance determined to be due and payable once the facility achieves substantial compliance or is terminated from the program.

B. Proposed Reduction of a Civil Money Penalty by 50 Percent for Self-Reporting and Prompt Correction of Noncompliance

Sections 6111(a) and (b) of the Affordable Care Act add new sections 1819(h)(2)(B)(ii)(II)and (III) and

1919(h)(3)(C)(ii)(II) and (III) of the Act. These sections establish new authorities for CMS to reduce a civil money penalty it imposes by up to 50 percent when CMS determines that a facility has self-reported and promptly corrected its noncompliance. This new provision explicitly provides that such reduction is not applicable for noncompliance that constitutes immediate jeopardy to resident health and safety, or that constitutes either a pattern of harm or widespread harm to facility residents, or that resulted in a resident's death. Additionally, the new provisions clearly specify that this reduction does not apply to a civil money penalty that was imposed for a repeated deficiency that resulted in a civil money penalty reduction under this section in the previous year.

This proposed rule would permit CMS to reduce a civil money penalty if a facility self-reports and promptly corrects quality problems. The new reduction authority works in harmony with section 6102 of the Affordable Care Act that requires nursing homes to implement an effective ethics and compliance program as well as an internal quality assurance and performance improvement program. The requirements in both sections 6111 and 6102 of the Affordable Care Act emphasize the value of systems within a nursing home that can continuously stream performance information back to its facility management with the expectation that problems with the provision of quality care would be identified and promptly remedied, and that system improvements would be put in place to prevent recurrence. New sections 1819(h)(2)(B)(ii)(II) and (III) and 1919(h)(3)(C)(ii)(II) and (III) of the Act, as amended by sections 6111(a) and (b) of the Affordable Care Act, support section 6102 of the Affordable Care Act, promoting quality assurance and improvement by adding a financial incentive through the 50 percent reduction of a civil money penalty following self-reporting and prompt correction of such problems. We are proposing to implement these new requirements at § 488.438(c).

The language of the new statutory provision permissively states that the Secretary may reduce an imposed civil money penalty by up to 50 percent "where a facility self-reports and promptly corrects a deficiency for which a penalty was imposed under this clause not later than 10 calendar days after the date of such imposition." We propose that the 50 percent reduction would be applied only where a number of conditions are met. First, the facility must have self-reported the noncompliance to CMS or the State before it was identified by CMS or the State and before it was reported to CMS or the State by means of a complaint lodged by a person other than an official representative of the nursing home. Second, correction of the noncompliance must have occurred within ten calendar days of the date that the facility identified the deficient practice. For a number of reasons stated below, we propose not to permit a 50 percent reduction when the self-reporting or the correction occurred at any later point in time. To credit a facility with "self-reporting" only after a facility has been surveyed and noncompliance has been discovered by CMS would not meet the common sense meaning of "self-reporting." We have proposed to give meaning to this provision in a manner that can best encourage facilities to self-report their noncompliance so that they can take the necessary corrective action as quickly as possible, without waiting for the State or CMS to identify or to cite the noncompliance, and thus be rewarded for their efforts. Therefore, under the discretion provided to us in this provision, we are declining to reduce a civil money penalty by 50 percent when a facility attempts to self-report noncompliance after it has already been identified by CMS. Rather, we propose at § 488.438(c)(2)(i) and (ii) that, among other criteria, in order for a facility to receive this 50 percent reduction, CMS must determine that the facility self-reported and corrected the noncompliance within 10 days of identifying it, and before it was identified by CMS or the State. In addition we specify that any attempted self-reporting of noncompliance by a facility that occurs after it was already identified by CMS will not be considered for any reduction under this proposed provision.

In accordance with sections 6111(a) and (b) of the Affordable Care Act, which adds new subsections (III)(bb) to sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Act, noncompliance constituting immediate jeopardy, a pattern of harm, widespread harm, or resulting in a resident's death is not eligible for the civil money penalty reduction that might otherwise be available in the case of self-reporting and prompt correction. Therefore, we are proposing to add this limitation at § 488.438(c)(2)(iv). Noncompliance at these scope and severity levels indicates a significant breakdown in facility performance and systems to the extent that, even if self-reported, warrants an equally significant consequence without the benefit of a considerable reduction. Furthermore, new sections 1819(h)(2)(B)(ii)(III)(aa) and 1919(h)(3)(C)(ii)(III)(aa) of the Act, as amended by sections 6111(a) and (b) of the Affordable Care Act, also specify that the reduction under these provisions would not apply for facilities that have repeated noncompliance for which a penalty reduction under this provision was received during the previous year. We are proposing to add this limitation at § 488.438(c)(2)(v). We believe, and Congress clearly indicated, that facilities unwilling or unable to maintain and sustain compliance with the same participation requirements over this period of time should not be rewarded with a reduced civil money penalty. This is consistent with current regulations at § 488.438(d)(2) which require that the State and CMS must increase the civil money penalty amount for any repeated deficiencies for which a lower level penalty amount was previously imposed. Current regulations at § 488.438(d)(3) define repeat deficiencies as "deficiencies in the same regulatory grouping of requirements found at the last survey, subsequently corrected, and found again at the next survey."

We are also proposing at § 488.438(c)(2)(iii) to specify that a facility must waive its right to a hearing in order to receive this 50 percent reduction. This is because, by the facility's own admission through its self-reporting and correction, it has acknowledged its noncompliance, thereby substantially eliminating the basis for any formal appeal. Should a facility elect to expend its resources on an administrative appeal, we believe it should choose between the 50 percent reduction otherwise available or pursuing the appeal. We also reinforce the incentive of a facility to invest in its program improvement by making it clear that the civil money penalty reduction for self-reporting and prompt correction will be at the maximum 50 percent level rather than any other permissible lower percentage amount.

The Secretary's authority for such a civil money penalty reduction under Section 6111 of the Affordable Care Act is discretionary and states that the reduction may be "up to 50 percent." To maximize the incentives for quality improvement, and to remove uncertainty for nursing homes, we propose in this regulation to set the percentage reduction at the highest permissible level of 50 percent in these circumstances.

In proposed § 488.436(b)(1) and § 488.438(c)(3), we are proposing to amend these sections to specify that a

facility may receive only one and not both of the available civil money penalty reductions. Under existing regulations at § 488.436(b), a facility may receive a 35 percent reduction in its civil money penalty liability if it timely waives its right to appeal the determination of noncompliance that led to the imposition of the penalty. No other criterion needs to be met in order for a facility to get this 35 percent reduction. However, in order to receive the higher 50 percent reduction in penalty, a facility must not only waive its right to a hearing, but it must also meet the specific criteria at proposed § 488.438(c)(2). A qualifying facility may receive either the 35 percent reduction for waiving its right to a hearing or the 50 percent reduction for self-reporting and promptly correcting, but in no case will the facility receive both reductions at the same time.

C. Proposed Opportunity for an Independent Informal Dispute Resolution Process

Sections 6111(a) and (b) of the Affordable Care Act adds new section (IV)(aa) to sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Act, which provides a facility with the opportunity to participate in an independent informal dispute resolution process if civil money penalties have been imposed against the facility. This process is to be offered to a facility not later than 30 days after the imposition of the civil money penalty and must generate a written record prior to the collection of the penalty. Additionally, the independent informal dispute resolution process is not automatic but, consistent with the existing informal dispute resolution process under § 488.331, is available only upon the facility's request.

Language included in the House Ways and Means Committee Report H.R. 3200, while not enacted, is similar to the language used in the Affordable Care Act and offers some insight into what prompted the inclusion of this new independent review process and what was envisioned as "independent." The language in H.R. 3200 provided that any such process "shall allow independent informal dispute resolution to be conducted by an independent State agency (including an umbrella agency, such as the Health and Human Services Commission), a Quality Improvement Organization, or the state survey agency, so long as the participants in independent informal dispute resolution are not involved in the initial decision to cite the deficiency (ies) and impose the remedy (ies). Whoever is authorized to conduct independent informal dispute must not have any conflicts of interest * * *." We also note that during debate on the House floor on March 21, 2010, U.S. House of Representatives Energy and Commerce Committee Chairman Henry Waxman stated that over 40 percent of nursing home surveyors in four States told the Government Accountability Office (GAO) that their existing States' processes for informal dispute resolution favored nursing home operators over resident welfare. Representative Waxman further stated that the independent informal dispute resolution process "should be conducted by an independent State agency or entity with healthcare experience, or by the State survey agency, so long as no entity or individual who conducts independent informal dispute resolution has a conflict of interest," and that anyone should have the right to participate in the process.

While operational details of this independent review process are more appropriate for inclusion as guidance in our *State Operations Manual,* we are proposing specific core elements be included so that we can ensure the fairness and efficiency of the independent informal dispute resolution process. (CMS will notify the facility of the opportunity for this process as specified in proposed § 488.431.)

We are proposing at § 488.431(a) that CMS continues to retain ultimate authority for the survey findings and imposition of civil money penalties, and also provide that an independent informal dispute resolution must be requested by the facility within 30 days of notice of imposition of a civil money penalty. In an effort to ensure that the independent informal dispute resolution process is completed timely, we are proposing at § 488.431(a)(1) that it be completed within 60 days of the imposition of the civil money penalty. We are proposing at § 488.431(a)(2) that this process will generate a written record prior to the collection of any penalty. At proposed § 488.431(a)(3), we are requiring that the independent informal dispute resolution process include notification to an involved resident or a resident representative, as well as the state ombudsman, with respect to the opportunity to provide written comment.

We propose that the new independent informal dispute resolution process be an additional option for nursing homes and that nursing homes would retain the option to use the existing informal dispute resolution process under § 488.331. We believe that the current informal dispute resolution process can be expeditious and that it addresses a greater range of noncompliance issues that would affect other enforcement remedies than the new independent informal dispute resolution process is required to cover. The Affordable Care Act requires that the independent process be available only in cases of noncompliance for which a civil money penalty was imposed. Although States may elect to make the independent process applicable to a wider array of situations, continued maintenance of the existing informal dispute resolution process will ensure the availability of a system to address facility challenges of cited deficiencies regardless of whether other non-civil money penalty remedies are imposed.

We also propose at § 488.431(a)(4) that the new independent informal dispute resolution process be conducted at the requesting facility's expense, and expect that a system of user fees designed to cover expenses of this process will be put in place in each State. We ask for comments on alternative user fee systems. We believe this arrangement is advisable for a number of reasons. First, the current informal dispute resolution process will continue to be available to nursing homes at no charge. Second, without a user fee, the costs of the new process would be borne by the Medicare Trust Fund or other public sources that are already subject to serious fiduciary challenge. Third, in electing to use the new independent process, a nursing home must believe that there is added value to the new process as compared with either using the current (and still available) process that does not involve a user fee or requesting a formal appeal under § 498.40.

A few States have had long-standing independent informal dispute resolution programs. To gather information on the range of potential user fees, we examined the fee structure used by a contractor that has contracts with a number of such States. The purpose of our examination was to provide insight into how the user fee aspect of a national independent informal dispute resolution process might operate. In the most useful example we found, the fee structure is built on a base fee of $160 per deficiency. Upon this foundation certain variable costs are added so that the total fee amount can be responsive to the complexity of the case and the skill sets most useful in the dispute resolution process. For example, the involvement of nurses are based on an add-on hourly nurse rate (currently $145) and the involvement of a physician in some cases results in an add-on of a different

physician reviewer rate (currently $300/hour). The total fees range from $550 for a less complex case (1 to 1½ half hours of review); $800–$1,000 for a more complicated case (2–3 hours of review) and $1,000–$3,000 (3–4 hours) for the most complex cases involving immediate jeopardy or substandard quality of care. The complexity of the case is based on both the number of deficiencies that are in dispute and the amount of time it takes the nurse or physician reviewer to assess an individual deficiency. Generally, a lower scope and severity deficiency (no actual harm deficiencies) would require less review time whereas more significant deficiencies (such as immediate jeopardy or substandard quality of care) would require more time to review. The fees apply to a record review and typically do not include any telephonic or in-person conferences.

In electing to use the new process, a nursing home is free to make a marketplace decision as to whether the user fee will be worth the cost compared to the option of using the current informal dispute resolution process that involves no user fee for the facility. In electing to use the new process, we expect that the nursing home will generally consider the user fee to be less costly than filing a formal appeal. Those lesser costs may derive from both lower preparation, legal, and filing fees, together with the 35 percent reduction in the civil monetary penalty that is available under § 488.436 in situations where a nursing home elects not to request a formal hearing. We invite comments on the user fee and whether there should be distinctions made in the user fees depending on certain factors, such as whether CMS or the State changed the scope, severity, or quantity of deficiency citations as a result of information obtained through the independent informal dispute resolution process. We are also soliciting comments on whether the fee should be returned to the facility in the event that the applicable civil money penalty is completely eliminated as proposed in § 488.431(a)(4). We propose that the system of fees must be approved by CMS, be based on expected average costs, and must be uniformly applied within the State.

Finally, in view of the insights and underlying intent of this new process, as provided by the House language that is similar to the language passed in the Affordable Care Act and statements expressed by Chairman Waxman noted above, we are proposing at § 488.431(a)(5) that independent informal dispute resolution be conducted by the State under section 1864 of the Act, or an entity approved by the State and CMS, or by CMS in the case of surveys conducted only by Federal surveyors, with no conflicts of interest, such as: (i) A component of an umbrella State agency provided that the component is organizationally separate from the state survey agency; (ii) an independent entity with healthcare experience selected by the State and approved by CMS; or (iii) a distinct part of the State survey agency, so long as the entity or individual(s) conducting the independent informal dispute resolution has no conflict of interest and has not had any part in the survey findings under dispute.

D. Proposed Acceptable Uses of Civil Money Penalties Collected by CMS

Section 6111 of the Affordable Care Act establishes new acceptable uses of civil money penalties collected by CMS. Some of these collected civil money penalty funds must be applied directly to promote quality care and the well-being of nursing home residents. Additionally, the Affordable Care Act makes it clear that the specified use of such funds, collected from SNFs, SNF/NFs and NF-only facilities as a result of civil money penalties imposed by CMS, must be approved by CMS.

The Affordable Care Act provides flexibility about how civil money penalty funds collected by CMS can be used. These new provisions are also consistent with section 1919(h)(2)(A)(ii) of the Act regarding how civil money penalties may be used when collected by the State. Section 1919(h)(2)(A)(ii) of the Act provides that civil money penalties that are imposed by the State shall be applied to the protection of the health or property of nursing facility residents. the whether an acceptable use of collected fees would be to offset a portion of the cost of the independent informal dispute resolution process. The provisions of section 1128A of the Act continue to be applied to civil money penalties under sections 1819(h) and 1919(h) of the Act and specify that funds collected from Medicare facilities attributable to Title XVIII be deposited into the United States Treasury. However, the specific authorities provided by sections 6111(a) and (b) of the Affordable Care Act, which adds new subsections (IV)(ff) to sections 1819(h)(2)(B)(ii) and 1919(h)(3)(C)(ii) of the Act, expressly provide that now "a portion" of these collected funds may be used to benefit residents. Giving weight and meaning to both provisions, we are proposing that while some portion of the collected civil money penalty funds from Medicare facilities will continue to be deposited with the Treasury, another portion of those funds may be directed back into the program to be invested in activities that benefit residents. Specifically, we are proposing at § 488.433 that 50 percent of the Title XVIII portion of collected civil money penalty amounts would be used for activities that would benefit nursing home residents and that the remaining 50 percent of collected funds applicable to Title XVIII would continue to be deposited to the Department of the Treasury. This proposed division of funds reflects the focus and importance the Affordable Care Act provisions give to improving and promoting the health and well-being of nursing home residents. Furthermore, to protect against any actual or potential conflicts of interest, we specify at proposed § 488.433 that collected civil money penalty funds cannot be used for survey and certification operations and functions performed under section 1864 of the Act, but must entirely be used for activities that benefit nursing home residents and that any such activity must be approved by CMS.

With regard to distinguishing between Medicare and Medicaid proportions of civil money penalty collections for dually-participating facilities, we retain current regulations at § 488.442(f) (but amend them to include reference to proposed § 488.433) that specify the formula for determining the proportion of collected civil money penalty funds that are to be returned to the State in dually participating facilities, that is, "in proportion commensurate with the relative proportions of Medicare and Medicaid beds at the facility actually in use by residents covered by the respective programs on the date the civil money begins to accrue." These funds attributable to Title XIX are returned to the State in which the noncompliant facility that paid the civil money penalty is located, and this arrangement is continued in our proposed rule.

The Affordable Care Act provides examples of those types of activities that would be considered appropriate uses for civil money penalty monies, including—

- Assistance to support and protect residents of a facility that closes (voluntarily or involuntarily) or is decertified (including offsetting costs of relocating residents to home and community-based settings or another facility), which is found at proposed § 488.433(a) and (b);
- Projects that support resident and family councils and other consumer involvement in assuring quality care in facilities, which is found at proposed § 488.433(c);

• Facility improvement initiatives approved by CMS (including joint training of facility staff and surveyors, technical assistance for facilities implementing quality assurance programs, the appointment of temporary management firms, and other activities approved by CMS), which is found at proposed § 488.433(d).

At § 488.433(e) we propose the appointment of a temporary management firm as one possible use of collected civil money penalties, as noted in the new subsections added by section 6111 of the Affordable Care Act. Currently existing regulations at § 488.415(c) require that the temporary manager's salary is paid directly by the facility. Using civil money penalty funds to appoint a temporary management firm significantly reduces the deterrent effect of the temporary manager enforcement sanction since the costs associated with it would be paid for by collected civil money penalty funds instead of by the facility. We believe this was not the intent of Section 6111 of the Affordable Care Act. Therefore, while the proposed rule does not contemplate using civil money penalty funds for payment of the temporary manager's salary, it does contemplate using the funds for other expenses related to development and maintenance of temporary management or receivership capability (for example, recruiting, vetting, or retaining of temporary managers, or other related system infrastructure expenses). Use of funds in this manner should secure the readiness and availability of temporary manager candidates, and therefore, encourage the use of this sanction. When considering what initiatives or projects would make good use of civil money penalty funds collected from Medicare facilities and would best benefit nursing home residents, CMS may conclude that the State is in the best position to provide that effort. In this instance, CMS is free to use its share of the collected funds to pay the State to perform those activities that CMS determines would best benefit nursing home residents. This payment to a State to secure the State's assistance for a CMS-approved resident benefit activity does not constitute an increase in the State's proportion of any civil money penalty funds collected from a dually participating facility. Rather, these are funds that CMS collected from a Title XVIII facility and which CMS subsequently determines can be used in the most beneficial way through the State.

We wish to reiterate that use of funds collected from a SNF, SNF/NF, or NF-only facility as a result of a CMS-imposed civil money penalty must be approved by CMS. We expect that CMS will issue guidance that will permit specific categories of civil money penalty use without waiting for per-request approval, while other uses not listed in the guidance would require case-by-case advance approval.

III. Collection of Information Requirements

Section 4204(b) and 4214(d) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Public Law 100–203, enacted on December 21, 1987, provides a waiver of Office of Management and Budget review of information collection requirements for the purpose of implementing the nursing home reform amendments. The provisions of OBRA '87 that exempt agency actions to collect information from States or facilities relevant to survey and enforcement activities from the Paperwork Reduction Act are not time-limited.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that draft.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 1993), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small business. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any one year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Core-Based Statistical Area (for Medicaid) and outside of a Metropolitan Statistical Area (for Medicare) and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2010, that threshold level is currently approximately $135 million. These regulatory proposals would have no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation would not impose costs on State or local governments, the requirements of Executive Order 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 488

Administrative practice and procedure, Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 488 as set forth below:

PART 488—SURVEY, CERTIFICATION, AND ENFORCEMENT PROCEDURES

1. The authority citation for part 488 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act, unless otherwise noted (42 U.S.C. 1302 and 1395(hh)); Section 6111 of the Patient Protection and Affordable Care Act (Pub. L. 111–148)

Subpart E—Survey and Certification of Long-Term Care Facilities

2. Revise § 488.330(e)(2)(ii) to read as follows:

§ 488.330 Certification of compliance or noncompliance.

* * * * *

(e) * * *

(2) * * *

(ii) Except for civil money penalties imposed on NFs-only by the State, during any pending hearing that may be requested by the provider of services.

* * * * *

3. Amend § 488.331 by adding a new paragraph (a)(3) to read as follows:

§ 488.331 Informal dispute resolution.

(a) * * *

(3) For SNFs, SNF/NFs, and NF-only facilities that have civil money penalties imposed by CMS, CMS offers the facility an opportunity, at the facility's request if requested within 30 days of the notice of imposition of a civil money penalty, for independent informal dispute resolution, as specified in § 488.431(a).

* * * * *

Subpart F—Enforcement of Compliance for Long-Term Care Facilities With Deficiencies

4. Section 488.400 is revised to read as follows:

§ 488.400 Statutory basis.

Sections 1819(h) and 1919(h)of the Act specify remedies that may be used by the secretary or the State respectively when a SNF or a NF is not in substantial compliance with the requirements for participation in the Medicare and Medicaid programs. These sections also provide for ensuring prompt compliance and specify that these remedies are in addition to any other available under State or Federal law, and, except, for civil money penalties imposed on NFs-only by the State, are imposed prior to the conduct of a hearing.

5. Add a new § 488.431 to read as follows:

§ 488.431 Civil money penalties imposed by CMS and independent informal dispute resolution: for SNFS, SNF/NFs, and NF-only facilities.

(a) *Opportunity for independent review.* CMS retains ultimate authority for the survey findings and imposition of civil money penalties, but provides an opportunity for independent informal dispute resolution within 30 days of notice of imposition of a civil money penalty that—

(1) Is completed within 60 days of notice of imposition of civil money penalty if an independent informal dispute resolution is timely requested by the facility.

(2) Generates a written record prior to the collection of the penalty.

(3) Includes notification to an involved resident or resident representative, as well as state ombudsman, to provide opportunity for written comment.

(4) Is conducted at the facility's expense, consistent with a user fee system approved by CMS that is designed to cover only actual expenses of the independent informal dispute resolution process based on average costs that are uniformly applied but may vary by key categories such as time used in the dispute resolution process and the average cost for the amount of time used, except that the fee shall be returned in the event that the applicable civil money penalty is completely eliminated.

(5) Is conducted by the State under section 1864 of the Social Security Act, or by an entity approved by the State and CMS, or by CMS in the case of surveys conducted only by federal surveyors, which has no conflict of interest, such as:

(i) A component of an umbrella State agency provided that the component is organizationally separate from the State survey agency.

(ii) An independent entity with healthcare experience selected by the State and approved by CMS.

(iii) A distinct part of the State survey agency, so long as the individuals conducting the independent informal dispute resolution have no conflict of interest and have not directly participated in the survey that is the subject of the dispute resolution process.

(b) *Collection and placement in escrow account.*

(1) For both per day and per instance civil money penalties, CMS may collect and place the imposed civil money penalties in an escrow account on whichever of the following occurs first:

(i) The date on which the independent informal dispute resolution process is completed under paragraph (a) of this section.

(ii) The date that is 90 days after the date of the notice of imposition of the penalty.

(2) For collection and placement in escrow accounts of per day civil money penalties, CMS may collect the portion of the per day civil money penalty that has accrued up to the time of collection as specified in paragraph (b)(1) of this section. CMS may make additional collections periodically until the full amount is collected, except that the full balance must be collected once the facility achieves substantial compliance or is terminated from the program and CMS determines the final amount of the civil money penalty imposed.

(c) *Maintenance of escrowed funds.* CMS will maintain collected civil money penalties in an escrow account pending the resolution of an administrative appeal. CMS will retain escrow funds on an on-going basis and, once a final administrative decision is made, will either return applicable funds in accordance with § 488.431(e) or, in the case of unsuccessful administrative appeals, will periodically disburse the funds to States or other entities in accordance with § 488.433.

(d) *When a facility requests a hearing.*

(1) A facility must request a hearing on the determination of the noncompliance that is the basis for imposition of the civil money penalty within the time specified in § 498.40 of this chapter.

(2) If the administrative law judge reverses the civil money penalty determination in whole or in part, the escrowed amounts continue to be held pending expiration of the time for CMS to appeal the decision or, where CMS does appeal, a Departmental Appeals Board decision affirming the reversal of the civil money penalty. Any collected civil money penalty amount owed to the facility based on a final administrative decision will be returned to the facility with applicable interest.

6. Amend § 488.432 by revising the section heading and revising paragraphs (a), (b)(1) introductory text, (b)(2),(c)(1) introductory text, and (c)(2); and removing paragraph (e) to read as follows:

§ 488.432 Civil money penalties imposed: NF-only when State imposes civil money penalty.

(a) *When a facility requests a hearing.* (1) When the state imposes a civil money penalty against a non-state operated NF that is not subject to imposition of remedies by CMS, the NF must request a hearing on the determination of noncompliance that is the basis for imposition of the civil money penalty within the time specified in § 431.153 of this chapter.

(2)(i) If a facility requests a hearing within the time frame specified in paragraph (a)(1) of this section, for a civil money penalty imposed per day, the State initiates collection of the penalty when there is a final administrative decision that upholds the State's determination of noncompliance after the facility achieves substantial compliance or is terminated.

(ii) If a facility requests a hearing for a civil money penalty imposed per instance of noncompliance within the time specified in paragraph (a)(1) of this section, the State initiates collection of the penalty when there is a final administrative decision that upholds the State's determination of noncompliance.

(b) *When a facility does not request a hearing for a civil money penalty imposed per day.* (1) If a facility does not request a hearing in accordance with paragraph (a) of this section, the State initiates collection of the penalty when the facility—

* * * * *

(2) *When a facility does not request a hearing for a civil money penalty imposed per instance of noncompliance.* If a facility does not request a hearing in accordance with paragraph (a) of this section, the State initiates collection of the penalty when the time frame for requesting a hearing expires.

(c) *When a facility waives a hearing.* (1) If a facility waives, in writing, its right to a hearing as specified in § 488.436, for a civil money penalty imposed per day, the State initiates collection of the penalty when the facility—

* * * * *

(2) If a facility waives, in writing, its right to a hearing as specified in § 488.436, for a civil money penalty imposed per instance of noncompliance, the State initiates collection of the penalty upon receipt of the facility's notification.

* * * * *

7. Add a new § 488.433 to read as follows:

§ 488.433 Civil money penalties: Uses and approval of civil money penalties imposed by CMS.

Fifty percent of the collected civil money penalty applicable to Title XVIII will be deposited with the Department of Treasury in accordance with § 488.442(f). The remaining collected civil money penalty funds may not be used for survey and certification operations but must be used entirely for activities that protect or improve the quality of care for residents. These activities must be approved by CMS and include, but are not limited to:

(a) Support and protection of residents of a facility that closes (voluntarily or involuntarily).

(b) Time-limited expenses incurred in the relocation of residents to home and community-based settings or another facility when a facility is closed (voluntarily or involuntarily) or downsized pursuant to an agreement with the state Medicaid agency.

(c) Projects that support resident and family councils and other consumer involvement in assuring quality care in facilities.

(d) Facility improvement initiatives approved by CMS, such as joint training of facility staff and surveyors or technical assistance for facilities implementing quality assurance and performance improvement program.

(e) Development and maintenance of temporary management or receivership capability such as but not limited to, recruitment, training, retention or other system infrastructure expenses. However, as specified in § 488.415(c), a temporary manager's salary must be paid by the facility.

8. Section 488.436 is amended by revising paragraph (b)(1) to read as follows:

§ 488.436 Civil money penalties: Waiver of hearing, reduction of penalty amount.

* * * * *

(b) * * *

(1) If the facility waives its right to a hearing in accordance with the procedures specified in paragraph (a) of this section, CMS or the State reduces the civil money penalty by 35 percent, as long as the civil money penalty has not also been reduced by 50 percent under § 488.438.

* * * * *

9. Section 488.438 is amended by revising paragraphs (c) and (d)(1) to read as follows:

§ 488.438 Civil money penalties: Amount of penalty.

* * * * *

(c) *Decreased penalty amounts.*

(1) Except as specified in paragraph (d)(2) of this section, if immediate jeopardy is removed, but the noncompliance continues, the State or CMS will shift the penalty amount imposed per day to the lower range.

(2) When CMS determines that a SNF, SNF/NF, or NF-only facility subject to a civil money penalty imposed by CMS self-reports and promptly corrects the noncompliance for which the civil money penalty was imposed, CMS will reduce the amount of the penalty imposed by 50 percent, provided that all of the following apply—

(i) The facility self-reported the noncompliance to the State or CMS before it was identified by the State or CMS and before it was reported to the State or CMS by means of a complaint lodged by a person other than an official representative of the nursing home;

(ii) Correction of the self-reported noncompliance occurred within 10 calendar days of the date that the facility identified the noncompliance;

(iii) The facility waives its right to a hearing under § 488.436;

(iv) The noncompliance that was self-reported and corrected did not constitute a pattern of harm, widespread harm, immediate jeopardy, or result in the death of a resident; and,

(v) The civil money penalty was not imposed for a repeated deficiency that received a civil money penalty reduction under this section within the previous year. "Repeat deficiency" is defined in § 488.438(d)(3).

(3) Under no circumstances will a facility receive both the 50 percent civil money penalty reduction for self-reporting and correcting under this section and the 35 percent civil money penalty reduction for waiving its right to a hearing under § 488.436.

(d) *Increased penalty amounts.* (1) Before a hearing requested in accordance with § 488.431(d) or § 488.432(a), CMS or the State may propose to increase the per day penalty amount for facility noncompliance which, after imposition of a lower level penalty amount, becomes sufficiently serious to pose immediate jeopardy.

* * * * *

10. Section 488.440 is amended by revising paragraphs (b) and (c) to read as follows:

§ 488.440 Civil money penalties: Effective date and duration of penalty.

* * * * *

(b) The per day civil money penalty is computed and collectible, as specified in § 488.431 and § 488.432, for the number of days of noncompliance until the date the facility achieves substantial compliance, or, if applicable, the date of termination.

(c)(1) For NFs-only subject to civil money penalties imposed by the State, the entire penalty, whether imposed on a per day or per instance basis, is due and collectible as specified in the notice sent to the provider under paragraphs (d) and (e) of this section.

(2) For SNFs, SNF/NFs, or NFs subject to civil money penalties imposed by CMS, collection would be in accordance with § 488.431(b).

* * * * *

11. Section 488.442 is amended to remove and reserve paragraph (b) and revise paragraphs (a), (e)(1), and (f) to read as follows:

§ 488.442 Civil money penalties: Due date for payment of penalty.

(a) *When payments are due for a civil money penalty imposed.* (1) A civil money penalty payment is due in accordance with § 488.431 of this chapter for CMS-imposed penalties and is due 15 days after the State initiates collection pursuant to § 488.432 of this chapter for State-imposed penalties, except as provided in paragraphs (a)(2) and (3) of this section.

(2) *After a request to waive a hearing.* A civil money penalty is due 15 days after receipt of the written request to waive a hearing in accordance with § 488.436.

(3) *After the effective date of termination.* A civil money penalty payment is due 15 days after the effective date of termination, if that is earlier than the date contained in subsection (a)(1).

* * * * *

(b) [Reserved]

* * * * *

(e) * * *

(1) Medicare-participating facilities are deposited and disbursed in accordance with § 488.433; and

* * * * *

(f) *Collection from dually participating facilities.* Civil money penalties collected from dually participating facilities are deposited and disbursed in accordance with § 488.433 and returned to the State in proportion commensurate with the relative proportions of Medicare and Medicaid beds at the facility actually in use by residents covered by the respective programs on the date the civil money penalty begins to accrue.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare Supplementary Medical Insurance Program)

Dated: May 27, 2010.

Marilyn Tavenner,

Acting Administrator and Chief Operating Officer, Centers for Medicare & Medicaid Services.

Approved: June 29, 2010.

Kathleen Sebelius,

Secretary.

[FR Doc. 2010–16927 Filed 7–9–10; 8:45 am]

BILLING CODE 4120–01–P

Notices

Federal Register
Vol. 75, No. 132
Monday, July 12, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 7, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Federal Seed Act Program.

OMB Control Number: 0581–0026.

Summary of Collection: The Federal Seed Act (FSA) (7 U.S.C. 1551–1611) regulates agricultural and vegetable seeds in interstate commerce. Agricultural and vegetable seeds shipped in interstate commerce are required to be labeled with certain quality information such as the name of the seed, the purity, the germination, and the noxious-weed seeds of the state into which the seed is being shipped. State seed regulatory agencies refer to the Agricultural Marketing Service (AMS) complaints involving seed found to be mislabeled and to have moved in interstate commerce. AMS investigates the alleged violations and if the violation is substantiated, takes regulatory action ranging from letters of warning to monetary penalties. AMS will collect information from records of each lot of seed and make them available for inspection by agents of the Secretary.

Need and Use of the Information: The information collected consists of records pertaining to interstate shipments of seed which have been alleged to be in violation of the FSA. The shipper's records pertaining to a complaint are examined by FSA program specialists and are used to determine if a violation of the FSA occurred. The records are also used to determine if the precautions taken by the shipper assure that the seed was accurately labeled. The FSA program would be ineffective without the ability to examine pertinent records as necessary to resolve complaints of violations.

Description of Respondents: Business or other for-profit; Farm.

Number of Respondents: 2,940.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 42,906.

Agricultural Marketing Service

Title: Regulation Governing Inspection, Certification, and Standards for Fresh Fruits, Vegetables and other Products.

OMB Control Number: 0581–0125.

Summary of Collection: The Agricultural Marketing Act of 1946 gives authorization to USDA to inspect, certify and identify the class, quantity, quality and condition of agricultural produces when shipped or received in interstate commerce and to enter into cooperative agreements with cooperating Federal-State inspection Agencies that provide for this inspection work. The Fresh Products Branch provides a nationwide inspection and grading service for fresh fruits, vegetables, and other products to shippers, importers, processors, sellers, buyers and other financially interested parties on a "user-fee" basis. The program is voluntary and services are made available only upon request or when specified by some special program or contact.

Need and Use of the Information: Various forms are used to collect information. Such information includes: the name and location of the person or company requesting the inspection, the type and location of the product to be inspected, the type of inspection being requested and any information that will identify the product. The information collected is needed to carry out the inspection and grading services.

Description of Respondents: Business or other for profit.

Number of Respondents: 41,370.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 9,296.

Agricultural Marketing Service

Title: Seed Service Testing Program.

OMB Control Number: 0581–0140.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946, as amended by 7 U.S.C. 1621 authorizes the Secretary to inspect and certify the quality of agricultural products and collect such fees as reasonable to cover the cost of service rendered. The purpose of the voluntary program is to promote efficient, orderly marketing of seeds and assist in the development of new and expanding markets. Under the program, samples of agricultural and vegetable seeds submitted to the Agricultural Marketing Service (AMS) are tested for factors such as purity and germination at the request of the applicant for the service. The Testing Section of the Seed Regulatory and Testing Branch of AMS that test the seed and issues the certificates is the only Federal seed testing facility that can issue the Federal Seed Analysis Certificate.

Need and Use of the Information: Applicants generally are seed firms who use the seed analysis certificates to represent the quality of seed lots to foreign customers according to the terms specified in contracts of trade. The only information collected is information needed to provide the service requested by the applicant. Applicants must provide information such as the kind and quantity of seed, tests to be performed, and seed treatment, if present, along with a sample of seed in order for AMS to provide the service. Only authorized AMS employees use the information collected to track, test, and report test results to the applicant. If the information were not collected, AMS would not know which test to conduct or would not be able to relate the test results with a specific lot of seed.

Description of Respondents: Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 81.

Frequency of Responses: Reporting; On occasion.

Total Burden Hours: 668.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–16893 Filed 7–9–10; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

July 7, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Importation of Nursery Stock.

OMB Control Number: 0579–0279.

Summary of Collection: Under the Plant Protection Act (7 U.S.C. 7701 *et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of plant pests and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. The Animal and Plant Health Inspection Service (APHIS) regulations contained in "Subpart-Nursery Stock Plants, Roots, Bulbs, Seeds, and Other Plant products (§§ 319.37 through 319.37–14) restricts among other things, the importation of living plants, plant parts, seeds, and plant cuttings for planting or propagation.

Need and Use of the Information: APHIS requires that some plants or plant products be accompanied by either a phytosanitary inspection certificate with a declaration, export certificate, or a special certificate that is completed by plant health officials in the originating or transiting country. APHIS uses the information on these certificates to determine the pest condition of the shipment at the time of inspection in the foreign country. This information is used as a guide to the intensity of the inspection that APHIS must conduct when the shipment arrives. Without this information, all shipments would need to be inspected more thoroughly, thereby requiring considerably more time.

Description of Respondents: Business or other for-profit; Federal Government.

Number of Respondents: 52.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 451.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–16896 Filed 7–9–10; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Request Approval To Establish a New Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, that implement the Paperwork Reduction Act of 1995, this notice announces the National Institute of Food and Agriculture's (NIFA) intention to request approval to establish a new information collection for the REEport system.

DATES: Written comments on this notice must be received by September 15, 2010, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: You may submit comments, identified by 2010–0002 to: *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. You may submit written comments concerning this notice and requests for copies of the information collection to: Jason Hitchcock, Director, Information Policy, Planning and Training; *Mail:* NIFA/USDA, Mail Stop 2216, 1400 Independence Avenue, SW., Washington, DC 20250–2299; *Hand Delivery/Courier:* 800 9th Street, SW., Waterfront Centre, Room 4217, Washington, DC 20024; *Fax:* 202–720–0857; or *E-mail: jhitchcock@nifa.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jason Hitchcock, Director of Information, Policy, Planning, and Training; Information Systems and Technology Management; NIFA/USDA; *E-mail: jhitchcock@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: REEport System.

OMB Number: 0524–New.

Type of Request: Intent to request approval to establish a new information collection for three years.

Abstract: The United States Department of Agriculture (USDA), National Institute of Food and Agriculture (NIFA) administers several competitive, peer-reviewed research, education, and extension programs, under which awards of a high-priority are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*); the Smith-Lever Act (7 U.S.C. 341 *et seq.*); and other legislative authorities. NIFA also administers several formula funded research programs. The programs are authorized pursuant to the authorities contained in the McIntire-Stennis Cooperative Forestry Research Act of October 10, 1962 (16 U.S.C. 582a–1–582a–7); the Hatch Act of 1887, as amended (7 U.S.C. 361a–361i); Section 1445 of Public Law 95–113, the Food and Agriculture Act of 1977, as amended (7 U.S.C. 3222); and Section 1433 of Subtitle E (Sections 1429–1439), Title XIV of Public Law 95–113, as amended (7 U.S.C. 3191–3201). Each formula funded program is subject to a set of administrative requirements: "Administrative Manual for the McIntire-Stennis Cooperative Forestry Research Program," the "Administrative Manual for the Hatch Research Program," the "Administrative Manual for the Evans-Allen Cooperative Agricultural Research Program," and the "Administrative Manual for the Continuing Animal Health and Disease Research Program."

NIFA plans to deploy REEport, a critical component of its One Solution reporting initiative (*http://www.nifa.usda.gov/business/reporting/onesolution.html*) in a staged approach. REEport will become NIFA's grant and formula project reporting system, building on and replacing the existing Current Research Information System (CRIS) web forms system (OMB Control Number: 0524–0042). As part of REEport's implementation, NIFA intends to transfer existing data in CRIS to REEport and then terminate the applicable component of CRIS. For the existing projects that reported to CRIS, the awardees will then report to REEport.

Out of an initiative of the Research Business Models (RBM) Subcommittee of the Committee on Science (CoS), a committee of the National Science and Technology Council (NSTC), came the Research Performance Progress Report (RPPR). The RPPR is a new uniform format for reporting performance progress on Federally-funded research projects. Upon implementation, the RPPR will be used by agencies that support research and research-related activities for use in submission of interim progress reports. It is intended to replace other interim performance reporting formats currently in use by agencies. In anticipation of the RPPR's implementation, NIFA based REEport's format on the RPPR.

REEport will better address NIFA accountability and reporting needs by supporting limited use of program-specific data fields and the ability to upload documents such as portable document files (PDF) into reports. With the implementation of REEport, NIFA will eliminate the requirement to submit an annual Funding and Staff Support (Form AD–419) for non-formula grants (AD–419 data will still be required for formula grant projects). At this time, the intention is to collect expenditure information only for formula projects through REEport and this will take the form of what is currently collected on the AD–419.

REEport will allow Hatch and Evans-Allen projects to be linked to planned programs in the Agricultural, Research, Extension and Education Reform Act of 1988 (AREERA) Plan of Work Information System which will simplify the preparation of State Annual Reports. Each Hatch and Evans-Allen project in REEport will choose which Planned Program it is a part of in the Plan of Work. Once this link is made, expenditures, FTEs, and possibly Knowledge Area Classification can then roll up into the Plan of Work system, thus eliminating points of double reporting and eliminating discrepancies between the two systems.

Version 1 of REEport is expected to be deployed in the following four stages:

- Stage A—Non-formula new project initiation—implementation is anticipated for October 1, 2010.
- Stage B—Progress and final technical reports for all new and existing (data transferred from CRIS) non-formula grants—implementation is anticipated for January 14, 2011.
- Stage C—Formula new project initiation—implementation is targeted for October 1, 2011.
- Stage D—Expenditure, progress, and termination reports for all new and existing (data transferred from CRIS) formula projects—implementation is targeted for October 1, 2011.

Further information about each of these stages can be found on *http://www.nifa.usda.gov/business/reeport_imp.html* which will include implementation updates and other information as it becomes available. NIFA will send out the updates monthly to the new REEportDeploy Lyris e-mail list, which has been created from the CRIS and Plan of Work contacts lists. Interested parties may subscribe to the list by sending an e-mail message to *lyris@lyris.nifa.usda.gov.* Skip the subject line and type subscribe REEportDeploy in the body of your message. Be sure you receive an e-mail confirming your subscription.

The REEport system is to be NIFA's new documentation and reporting system for project initiation and reporting and constitute a necessary information collection for NIFA-supported projects as set forth in requirements established in 7 CFR Parts 3400 through 3430 pertaining to the aforementioned authorities. This information collection is necessary in order to provide descriptive information regarding individual research, education, extension, and integrated activities and to document expenditures and staff support, as well as monitor the progress and impact of such activities.

The information provided through REEport will help users (grantees, grantee institutions and NIFA) to keep abreast of the latest developments in agricultural, food science, human nutrition and forestry research and education; track resource utilization in specific target areas of work; plan for future activities; plan for resource allocation to research, education, and extension programs; avoid costly duplication of effort; aid in coordination of efforts addressing similar problems in different locations; and aid research, education, and extension workers in establishing valuable contacts within the agricultural community.

REEport Stage A and Stage B User Fields and Types

1. *Project Initiation:*

a. (conditional requirement) Grantee Project Number (REEport partner sites require a project number. Field will not be displayed to independent grantees).

b. (optional) Collaborating/Partnering Country.

c. Goals and Objectives (text box).

d. Expected Outputs (text box).

e. Expected Outcomes (text box).

f. Methods (text box).

g. Non-technical Summary (text box).

h. (optional) Target Audience (text box).

i. (optional) Animal Health Component (percent).

j. Taxonomy (one required but no more than 10 accepted).

i. Knowledge Area (code and percent).

ii. Subject of Investigation (code and percent).

iii. Field of Science (code and percent).

k. Research/Education/Extension project effort allocation (percent).

i. If Research percent is greater than 0, further refinement of the activity is required:

1. Basic (percent).
2. Applied (percent).
3. Development (percent).

ii. If Research is null or zero, the refinement fields will be hidden from view on the interface.

2. *Progress/Final Technical Reports:* Information collected for progress/final technical reports will be as indicated in the RPPR with the exception of NIFA special reporting requirements (as allowed by the RPPR) as noted.

a. Grant Participants.

i. Actual FTEs for reporting period.

Role	Non-students or faculty	Students within staffing roles		
		Under-graduate	Graduate	Post-doctorate
Scientist				
Professional				
Technical				
Administrative				
Other				

ii. Changes project participants from Project Initiation or previous report (text box).

b. Target Audiences (NIFA special requirement) (text box).

c. Products.

i. Publications, conference papers, and presentations.

1. Type (choice of journal publications; books or other non-periodical, one time publications; other publications, conference papers and presentations).
2. Status (choice of published, accepted, submitted, other).
3. Year published (4 digit year).
4. Citation (text box).
5. NIFA support acknowledged (Y/N field).

ii. Inventions, patent applications, and/or licenses (including Plant Variety Protections).

1. Type (choice of patent, PVP, licenses).
2. Status (choice of application, awarded, licensed).
3. Patent/PVP Number (text box).
4. Title (text box).

iii. Other Products (Outputs).

1. Output Type.
2. Output (text box).
3. Description (text box).

d. Accomplishments.

i. Major activities, specific objectives, and significant results, including major findings, developments, or conclusions (both positive and negative), including a discussion of stated goals not met. (text box).

ii. Key outcomes.

1. Outcome type (choice of change in knowledge, change in action, change in condition).
2. Outcome (text box).

iii. What opportunities for training and professional development has the project provided? (text box).

iv. How have the results been disseminated to communities of interest? (text box).

v. What do you plan to do during the next reporting period to accomplish the goals? (text box).

e. Changes/Problems (text box).

Estimate of Burden: NIFA used burden estimates from the current CRIS collection to estimate the burden for REEport, but anticipates the transactions for project initiation may be reduced because grant application information will be used to prepopulate many fields. The total annual burden for the non RPPR portion of this collection is 36,620 hours.

Transaction name	Using RPPR format	Estimated number of responses	Estimated burden per response	Total annual burden
Project Initiation	No	3,700	4.6	17,020
Progress Report	Yes	8,700	2.7	23,490
Final Technical Report	No	2,800	2.7	7,560
Expenditure Report	No	8,700	1.4	12,180

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Done at Washington, DC, this 1st day of July, 2010.

Ann Bartuska,

Acting Deputy Under Secretary Research, Education, and Economics.

[FR Doc. 2010–16854 Filed 7–9–10; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southern New Mexico Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern New Mexico Resource Advisory Committee (RAC) will meet in Socorro, New Mexico. 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 continue to develop operating protocols, create a news release to solicit for project proposals, election of RAC Chairman, and creation of evaluation criteria for submitted proposals.

DATES: The meeting will be held August 2, 2010, 10 a.m.

ADDRESSES: The meeting will be held at 401 Park Street, Socorro Public Library.

Written comments should be sent to Mr. Al Koss, HC 68, Box 50, Mimbres, NM 88049–9301. Comments may also be sent via e-mail to *alkoss@fs.fed.us,* or via facsimile to 575–520–2551.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Wilderness Ranger District, HC 68, Box 50, Mimbres, NM 88049–9301. Visitors are encouraged to call ahead to 575–536–2250 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Mr. Al Koss, Designated Federal Official, 575–536–2250 or *alkoss@fs.fed.us.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The following business will be conducted: (1) Finalization of operating guidelines; (2) create a news release that will solicit project proposals; (3) Selection of a chairperson by the committee members; (4) create evaluation criteria to use for project proposals; and (5) Public Comment. Persons who wish to bring related matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by July 26 will have the opportunity to address the Comittee at those sessions.

July 6, 2010.

Alan E. Koss,

Designated Federal Official.

[FR Doc. 2010–16865 Filed 7–9–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Coconino Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Coconino Resource Advisory Committee will meet in Flagstaff, Arizona. The purpose of the meeting is for the committee members to discuss committee protocols, operating guidelines, and project proposal requirements.

DATES: The meeting will be held July 22, 2010, beginning at 1 p.m. to approximately 4 p.m.

ADDRESSES: The meeting will be held in the Ponderosa Room of the Coconino County Health Department, 2625 N. King St., Flagstaff, Arizona 86004. Send written comments to Brady Smith, RAC Coordinator, Coconino Resource Advisory Committee, c/o Forest Service, USDA, 1824 S. Thompson St., Flagstaff, Arizona 86001 or electronically to *bradysmith@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Brady Smith, Coconino National Forest, (928) 527–3490.

SUPPLEMENTARY INFORMATION: Agenda items for this meeting include discussion about (1) Whether or not projects will need to be NEPA-ready; (2) Possible limits on proposals; (3) Roles and responsibilities of the Coconino RAC; (4) Meeting structure, voting processes and agendas; (5) Budget; and (6) Project solicitation. The meeting is open to the public.

Dated: July 1, 2010.

M. Earl Stewart,

Forest Supervisor, Coconino National Forest.

[FR Doc. 2010–16652 Filed 7–9–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Florida Keys National Marine Sanctuary Advisory Council

AGENCY: Office of National Marine Sanctuaries (ONMS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The ONMS is seeking applications for the following vacant seats on the Florida Keys National Marine Sanctuary Advisory Council: Boating Industry (member), Boating Industry (alternate), Citizen at Large—Middle Keys (alternate), Citizen at Large—Upper Keys (member) Citizen at Large—Upper Keys (alternate), Diving—Upper Keys (member), Diving—Upper Keys (alternate), Fishing Charter Sports Fishing (member), Fishing—Charter Sports Fishing (alternate), Fishing—Commercial—Marine/Tropical (member), Fishing Commercial Marine/Tropical (alternate), Fishing—Commercial—Shell/Scale (alternate), Fishing—Recreational (member), Fishing Recreational (alternate), Research and Monitoring (member), Research and Monitoring (alternate), South Florida Ecosystem Restoration (member), Tourism—Lower Keys (member), Tourism Lower Keys (alternate), and Tourism Upper Keys (member). Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the sanctuary. Applicants who are chosen as members should expect to serve 3-year terms, pursuant to the council's Charter.

DATES: Applications are due by August 6, 2010.

ADDRESSES: Application kits may be obtained from Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Lilli Ferguson, Florida Keys National Marine Sanctuary, 33 East Quay Rd., Key West, FL 33040; (305) 292–0311 x245; *Liili.Ferguson@noaa.gov.*

SUPPLEMENTARY INFORMATION: Per the council's Charter, if necessary, terms of appointment may be changed to provide for staggered expiration dates or member resignation mid term.

Authority: 16 U.S.C. 1431, *et seq.* (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: June 14, 2010.

Daniel J. Basta,

Director of National Marine Sanctuaries, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2010–16744 Filed 7–9–10; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 100607244–0246–01]

RIN 0648–XW40

Listing Endangered and Threatened Wildlife and Plants; 90–Day Finding on Petitions to List the Porbeagle Shark under the Endangered Species Act

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

ACTION: Notice of 90–day petition finding.

SUMMARY: We, NMFS, announce a 90–day finding for two petitions to list

porbeagle sharks (*Lamna nasus*) under the Endangered Species Act (ESA). We find that neither petition presents substantial scientific information indicating the petitioned actions may be warranted. Accordingly, we will not initiate a status review of the species at this time.

FOR FURTHER INFORMATION CONTACT: Kim Damon-Randall, NMFS, Northeast Regional Office (978) 282–8485 or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401. The petition and other pertinent information are also available electronically at the NMFS website at *http://www.nero.noaa.gov/prot__res/CandidateSpeciesProgram/csr.htm*. References are available upon request.

SUPPLEMENTARY INFORMATION:

Background

Under Section 4(b)(3)(A) of the ESA, within 90 days after receiving a petition to list a species under the ESA, the Secretary of Commerce (Secretary), to the maximum extent practicable, must make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding must be promptly published in the **Federal Register**. In determining whether a petition contains substantial information, we take into account information submitted with and referenced in the petition and all other information readily available in our files. Our ESA implementing regulations at 50 CFR 424.14(b)(1) define "substantial information" as the "amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." If the petition is found to present such information, the Secretary must conduct a review of the status of the involved species and make a determination whether the petitioned action is warranted within 12 months of receipt of the petition. In making a finding on a petition to list a species, the Secretary shall consider whether such a petition "(i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps" (50 CFR 424.14(b)(2)).

On January 22, 2010, we received a petition from Wild Earth Guardians (WEG), requesting that we list porbeagle sharks (Lamna nasus) throughout their entire range, or as Northwest Atlantic, Northeast Atlantic, and Mediterranean Distinct Population Segments (DPS), as either threatened or endangered under the ESA, as well as designate critical habitat for the species. We also received a petition from the Humane Society of the United States (HSUS), on January 22, 2010, requesting that we list a Northwest Atlantic DPS of porbeagle sharks as endangered under the ESA. The WEG and HSUS will hereafter jointly be referred to as the "petitioners," and the petitions referred to jointly as the "petitions." Information contained in the petitions focuses on the species' imperilment due to historical and continued overfishing; modification of habitat through pollution, climate change, and ocean acidification; failure of regulatory mechanisms; and low productivity of the species.

ESA Statutory Provisions and Policy Considerations

Under the ESA, a listing determination can address a species, subspecies, or a DPS of a vertebrate species (16 U.S.C. 1532 (16)). The ESA defines an endangered species as "any species which is in danger of extinction throughout all or a significant portion of its range" (ESA section 3(6)). A threatened species is defined as a species that is "likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range" (ESA section 3(19)).

The ESA defines species to include subspecies or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(16); 50 CFR 424.02 (k)). The U.S. Fish and Wildlife Service and NMFS have adopted a joint policy describing what constitutes a DPS of a taxonomic species (61 FR 4722; February 7, 1996). The joint DPS policy identifies two criteria for making DPS determinations: (1) The population must be discrete in relation to the remainder of the taxon (species or subspecies) to which it belongs; and (2) the population must be significant to the remainder of the taxon to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) "It is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation≥; or (2) "it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D)" of the ESA.

If a population segment is found to be discrete under one or both of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) "persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.≥

The WEG petition requested that porbeagle sharks throughout their entire range, or proposed Northwest Atlantic, Northeast Atlantic, and Mediterranean DPSs, be listed under the ESA. The petitioner states "the species and DPSs face threats from historic and continued overfishing, as well as a low reproduction rate, which hinders its recovery." The information contained in the WEG petition focuses on historical and continued overfishing of DPSs of porbeagle sharks globally. The HSUS petition only addresses a Northwest Atlantic DPS of porbeagle sharks. As such, we first reviewed whether either petition presented information indicating that the global porbeagle shark species consists of one or multiple DPSs, and then, assessed whether available information indicated that the petitioned actions may be warranted.

We evaluated whether the information provided or cited in the petition met the ESA's standard for "substantial information." We reviewed information that is readily available in our files, and consulted shark experts from NMFS' Highly Migratory Species (HMS) Management Division, Northeast Fisheries Science Center- Apex Predator Program, and the Southeast Fisheries Science Center to determine if the information readily available in our files indicates that the petitioned actions may be warranted, and if the available information supports the identification

of any DPS(s) for this species. In 2009, the International Council for the Exploration of the Sea (ICES) and the International Commission for the Conservation of Atlantic Tunas (ICCAT) conducted a stock assessment for porbeagle sharks - Report of the 2009 Porbeagle Stock Assessments Meeting (ICES/ICCAT, 2009). The HSUS petition references information from this report. In this finding, we heavily relied on the information from this report, as it was readily available in our files prior to receiving the petitions, it is referenced within the HSUS petition, and it is the most recent compilation of porbeagle shark data available.

In the following sections, we use the information presented in the petitions and in our files to: (1) describe the distribution of the porbeagle shark; (2) determine whether porbeagle shark populations may meet the criteria for being identified as DPSs; (3) evaluate whether the porbeagle shark or DPSs proposed by the petitioners are at abundance levels that would lead a reasonable person to conclude that listing under the ESA may be warranted; (4) evaluate whether any of the factors listed under section 4(a)(1) of the ESA may present threats to the existence of the species or DPSs proposed by the petitioners. We include conclusion subsections within each section, and our final conclusion regarding these petitions is under the Petition Finding section.

Porbeagle Shark Distribution and Analysis of DPS Information

Porbeagle sharks are found in the North Atlantic Ocean in the following locations: the Northeast coast of the United States.; Newfoundland Banks; Iceland; Barents, Baltic and North Seas; coast of western Europe; and the Mediterranean Sea. In the southern hemisphere, they are distributed in a circumglobal band of temperate waters in the southern Atlantic, southern Indian, southern Pacific, and Antarctic Oceans. The porbeagle prefers colder water, and it appears that they do not occur in equatorial waters; however, recent evidence from pop-up archival tags has revealed that mature female porbeagle sharks migrate to a subtropical pupping ground in the Sargasso Sea in winter (Campana *et al.*, 2010).

In its petition, HSUS states that "the Northwest Atlantic porbeagle population is distinct' because it is "markedly separated from other populations" due to "physical [and] behavioral factors," as evidenced by "genetic..discontinuity." The WEG petition suggests that the "Northwest Atlantic, Northeast Atlantic, and Mediterranean populations of the porbeagle shark qualify as DPSs under the ESA." The petitioners cite Kohler *et al.* (2002), COSEWIC (2004), Stevens *et al.* (2006), and NMFS (2010) in support of their conclusion about the existence of Northeast and/or Northwest Atlantic DPSs. Based on the best available information, there is conflicting scientific evidence regarding whether DPSs of porbeagle sharks exist. As indicated in the HSUS petition, most tagging data indicate porbeagle sharks are highly migratory, but remain within the range of the particular stock; thus, there is little exchange between the geographically dispersed populations in the Northeast and Northwest Atlantic (Stevens *et al.*, 2006; COSEWIC, 2004). As noted in the HSUS petition, a single transatlantic migration has been recorded; however, conventional tagging data (approximately 200 recaptures from three separate studies) and recent satellite tagging data indicate that transatlantic migrations are very limited (ICES/ICCAT, 2009). While the tagging data indicate that there is little movement between populations in the North Atlantic, which could lead to limited genetic exchange, mitochondrial DNA studies which were readily available in our files indicate that there is no differentiation among the stocks within the North Atlantic (Pade *et al.*, 2006; Testerman *et al.*, 2007). Genetic studies did, however, show marked differences in haplotype frequencies between the northern and southern hemispheres, which support the contention that there is restricted gene flow between the North and South Atlantic populations (ICES/ICCAT, 2009; Pade *et al.*, 2006; Testerman *et al.*, 2007). Based upon the available information, ICES/ICCAT (2009) determined, for management purposes, that porbeagle sharks consist of four separate stocks - the Northwest Atlantic, Northeast Atlantic, Southwest Atlantic, and Southeast Atlantic. However, fishery management units are not the equivalent of DPSs unless they also meet the criteria for identifying a DPS.

Conclusion

Given the conflicting evidence from the tagging and genetic data, without a more thorough analysis it is unclear as to whether porbeagle shark DPSs exist. As cited in the HSUS petition and noted above, the ICES/ICCAT porbeagle stock assessment (2009) separates the North Atlantic porbeagle population into two stocks, the Northwest (NW) and Northeast (NE) Atlantic stocks. The NW Atlantic stock includes porbeagles from the waters on and adjacent to the continental shelf of North America, and the NE Atlantic stock includes porbeagles from the waters in and adjacent to the Barents Sea, south to northwest Africa (ICES/ICCAT, 2009). Current information is insufficient to conclude whether fish from the Mediterranean represent a discrete population and should be considered separate from the NE stock. As such, NMFS considers the NE Atlantic stock to include the Mediterranean Sea. ICES/ICCAT (2009) also divides porbeagle in the South Atlantic into two separate stocks - the Southwest and Southeast. As mentioned above, however, fishery management units are not the equivalent of DPSs unless they also meet the criteria for identifying a DPS. The petitioners have not presented substantial information indicating that these populations meet the criteria for being identified as DPSs under the ESA.

However, in order to be thorough and ensure that each petitioned action is fully evaluated to determine if it may be warranted, we considered whether the petitioners presented substantial evidence indicating that the petitioned action for the full species or for the DPSs as proposed by WEG and HSUS may be warranted.

Abundance

NW Atlantic

In 2005, the NW Atlantic population size was estimated to vary from 188,000 to 195,000 fish (DFO, 2005). Based on the model estimates in 2005, the population was estimated to be 12 to 24 percent of what it had been in 1961. The ICES/ICCAT stock assessment working group ran several different models using the data that was used by DFO in 2005. The Bayesian Surplus Production (BSP) model estimated current (2005) biomass to be 66 percent of the 1961 biomass, compared to the age-structured model results presented above (ICES/ICCAT, 2009). The BSP model with equal weighting provided results that were more similar to the age-structured model, estimating current biomass at 37 percent of 1961 biomass. The BSP model with equal weighting predicted that the NW Atlantic stock would recover to sustainable biomass (BMSY) levels in approximately 20 years with no fishing (ICES/ICCAT, 2009). The working group also ran the BSP model again using data through 2009 and derived similar results; however, they noted the model indicated a low current fishing mortality rate relative to maximum sustainable yield (FMSY) because of low catches in 2008 (ICES/ICCAT, 2009). A forward projecting age- and sex- based model was also used by

the working group. This model estimated the total population size in 2009 to be approximately 22 to 27 percent of its size in 1961 and about 95 to 103 percent its size in 2001 (ICES/ICCAT, 2009). With this model, they also estimated the number of mature females in 2009 to range from 11,000 to 14,000 individuals, or 12 to 16 percent of its 1961 level and 83 to 103 percent of its 2001 value (ICES/ICCAT, 2009). Based on the results of this most recent modeling effort, the working group concluded that the NW Atlantic stock biomass is depleted below BMSY, recent fishing mortality is below FMSY, and recent biomass appears to be increasing (ICES/ICCAT, 2009).

NE Atlantic

According to ICES/ICCAT (2009), the NE Atlantic stock has the longest history of commercial exploitation; however, the lack of catch per unit effort (CPUE) data derived during the peak of the fishery makes it difficult to estimate current status relative to virgin biomass. The working group determined that this stock is depleted and that recent fishing mortality rates were either near or above sustainable levels (ICES/ICCAT, 2009). Based on their modeling efforts, the working group concluded that current management efforts are likely to result in the stock remaining fairly stable (ICES/ICCAT, 2009).

SW Atlantic

The working group concluded that the data for the southern hemisphere porbeagle stock are too limited to provide a robust indication on the status of this stock (ICES/ICCAT, 2009). They noted that the data that are available indicate a decline in CPUE in the Uruguayan fleet, suggesting a potential decline in porbeagle abundance in the SW Atlantic to levels below MSY (ICES/ICCAT, 2009). They conducted a similar modeling effort and noted that depletion levels are below MSY and fishing mortality rates are above those producing MSY; however, they also indicated that catch and other data are generally too limited to allow definition of sustainable harvest levels (ICES/ICCAT, 2009).

SE Atlantic

According to ICES/ICCAT (2009), information and data for porbeagle in the SE Atlantic are too limited to assess their status. The working group did note that available catch rate patterns suggest that this stock has stabilized since the early 1990s (ICES/ICCAT, 2009).

The abundance information in the petition and in our files does not indicate that listing the full species of porbeagle or any of the DPSs proposed by WEG or HSUS as threatened or endangered may be warranted.

Present or Threatened Destruction, Modification or Curtailment of Habitat or Range

The HSUS petition asserts that "[P]resent or threatened destruction, modification, of porbeagle habitat is negatively affecting the species," and provides references suggesting that coastal pollution, global climate change, and ocean temperatures and acidification could potentially have adverse effects on NW Atlantic porbeagle sharks. For coastal pollution, bioaccumulated contaminants are suggested as a concern to porbeagle fitness, as sharks are high on the trophic level. Available information does not indicate that the fitness of the NW Atlantic porbeagle stock is impacted by mercury or other bioaccumulated contaminants. The National Shark Research Consortium (NSRC) conducted studies from 2002–2007 that focused on essential fish habitat (EFH) and the effects of environmental pollutants on the reproduction, growth, and maturation of sharks along the eastern U.S. coast. NSRC submitted a five-year technical report to NOAA/NMFS (NSRC, 2007), which was readily available in our files before the petitions were received. NSRC (2007) found that although coastal and estuarine U.S. Atlantic sharks were exposed to polychlorinated bi-phenyls (PCB), the concentrations of PCB congeners showed that the more harmful, highly toxic congeners only accounted for 0.7 to 4 percent of the total PCB load, indicating that effects from these contaminants did not pose a significant threat. In addition, they determined that it was unlikely that infertility rates were associated with exposure to contaminants like organochlorine pesticides (OCP) and PCBs (NSRC, 2007). Although no studies have focused specifically on NW Atlantic porbeagle sharks, no information is presented to indicate that porbeagle sharks, as DPSs or as a single species, are currently at greater risk of being impacted by coastal pollution than other sympatric shark species.

HSUS also asserts that due to global climate change, the distribution of prey resources and competitors for these resources may change, which would limit the potential for porbeagles to recover. In addition, they stress that while there is no available information indicating a change in porbeagle distribution, ocean temperatures have increased by 0.1 degrees Celsius (C). Porbeagle sharks are opportunistic feeders, taking advantage of available prey (Campana and Joyce, 2004). They thermoregulate and have adapted to be able to hunt in colder waters but are commonly found in temperatures ranging from 2 to 23 degrees C (32 to 59 degrees Fahrenheit) (Campana and Joyce, 2004). As they are adapted to a fairly wide temperature range and are opportunistic feeders, available information does not indicate that a change in temperature of 0.1 degrees C would have a significant impact on porbeagle sharks. Furthermore, there is no information available that indicates there has been any change in the distribution of porbeagle sharks as a result of climate change, or that porbeagles are not adapting to potential changes in distributions of prey species.

Ocean acidification is posed as an additional threat to habitat or the range of porbeagle sharks by HSUS. HSUS states that "[T]he ongoing increase in ocean acidification poses an additional threat to the health of the populations of a number of marine species, porbeagle sharks among them," specifically pointing out hypercapnia, an increase in the amount of carbon dioxide in the tissues (Fabry *et al.*, 2008). As noted in the HSUS petition, Fabry *et al.* (2008) indicates that increases in carbon dioxide (CO2) have the potential to affect pH levels in marine organisms; however, they state that active animals have a higher capacity for buffering pH changes, and that the tolerance of CO2 by marine fish appears to be very high. Porbeagle sharks are an active, highly migratory species, and active animals have a higher capacity for buffering pH changes; therefore, they may have the ability to tolerate changes in CO2 and buffer pH changes (Compagno, 2001; Fabry *et al.*, 2008). Ocean acidification, therefore, does not appear to pose a significant risk to porbeagle sharks throughout the taxon's range or within separate DPSs.

Conclusion

Porbeagle sharks are a highly migratory species capable of thermoregulation and with the ability to feed opportunistically. Although coastal pollution, global climate change, and ocean temperatures and acidification were posed by HSUS as adversely affecting NW Atlantic porbeagle sharks, current information does not indicate that these factors are currently having significant impacts on porbeagle sharks or will in the foreseeable future; information was not presented on how these factors might affect populations in the NE Atlantic, SW Atlantic, or SE Atlantic. While we have concluded that

the petitions do not present substantial information indicating that the petitioned actions of listing the full porbeagle shark species or any of the DPSs proposed by WEG or HSUS under the ESA due to present or threatened destruction, modification, or curtailment of habitat or range may be warranted at this time.

Overutilization for Commercial, Recreational, Scientific or Education Purposes

The petitioners claim that overutilization of porbeagle shark for commercial and recreational purposes in the form of historical and continued overfishing requires that the species be listed under the ESA. Porbeagle sharks are currently managed by the Division of Fisheries and Oceans (DFO) in Canada, NMFS in the United States, the European Union (EU) in Europe, with ICES and ICCAT working collaboratively to perform stock assessments and make recommendations for management actions specific to porbeagles.

As indicated previously, ICES/ICCAT (2009) presented information on porbeagle stocks in the NW, NE, SW, and SE Atlantic. Although the stocks are depleted, available information indicates that the stocks are stable or increasing in size (ICES/ICCAT, 2009). Potential declines were suggested for the SW Atlantic stock; however, it was determined that data are too limited to indicate a trend (ICES/ICCAT, 2009). For all the stocks, it was determined that although catches on the high seas did occur, they occurred at low levels (ICES/ICCAT, 2009); therefore, bycatch and directed catch on the high seas is not a significant threat to the species. Furthermore, bycatch of porbeagle within the ICES and NAFO fisheries of Spain were very rare, and bycatch of porbeagle in the North and South Atlantic in swordfish (Xiphias gladius) fisheries by Spanish longliners was very low (ICES/ICCAT, 2009).

In the Northwest Atlantic, NMFS has set a total allowable catch (TAC) for porbeagles at 11.3 metric tons (mt) dressed weight (dw), and a commercial quota of 1.7 mt dw (50 CFR 635). The TAC is the total amount of a species that is allowed to be caught by all resource users over a particular period of time (e.g., year/fishing season). The commercial quota is the amount of the TAC allocated to fishermen issued a Federal limited access shark permit; however, all fishing for that species ceases when the commercial quota is reached. It has been determined that porbeagle sharks in the NW Atlantic are overfished and biomass has been depleted; however, biomass is currently increasing, and overfishing is no longer occurring (NMFS/HMS, 2009; ICES/ICCAT, 2009).

According to CITES (2010), Canadian catch data indicate that commercial porbeagle landings have progressively decreased from a peak in 1995 of 1400 tons (t) to 92t in 2007, corresponding with decreasing TAC levels (cited from Campana and Gibson, 2008). The TAC for porbeagle shark in Canada has been decreased from 250t to 185t; of this amount, 125t is the quota for the directed commercial shark fishery in the Maritimes Region; 10t is the quota for the directed commercial fishery in the Gulf and Quebec Regions combined; and the remaining 50t quota is reserved to account for bycatch of porbeagle shark in other fisheries (DFO, 2009). Mating grounds for the species have also been closed in Canada to directed fisheries. CITES (2010) states that population projections indicate that the population will eventually recover if harvest rates are kept under 4 percent (approximately, 185t, as cited in DFO 2005b). Canadian landings have been below the TAC the last several years, and ICES/ICCAT (2009) indicates that the NW Atlantic stock is increasing. Thus, reduced commercial landings in both the United States and Canada appear to be having a positive impact on the stock, and the stock is expected to continue to recover under the management measures in place in both countries.

According to a draft CITES proposal that was readily available in our files prior to receiving the petitions, catch of porbeagles in recreational fisheries is considered to be extremely low in Canada and the United States (CITES, 2009). Recreational fisheries for sharks in the United States are limited to rod, reel, and handline gear (50 CFR part 635). In addition, according to NMFS/HMS (2009), between 2000 and 2008, only 40 porbeagle sharks were observed in the rod and reel fishery, and out of that total, only 4 were kept and 36 were released alive.

The HSUS notes that it feels NMFS underestimates the number of porbeagle sharks caught and discarded as a result of recreational fisheries. It also notes discrepancies between Tables 3.24 and 3.26 in Amendment 2 of the HMS Fishery Management Plan (FMP) (NMFS/HMS, 2008). Table 3.24 is a compilation of recreational fisheries data from the Marine Recreational Fisheries Statistics Survey (MRFSS), showing expanded MRFSS survey estimates, while table 3.26 shows raw, unexpanded numbers of fish from the large pelagic survey (LPS). Offshore fishing trips targeting pelagic sharks typically make up a relatively small proportion of all recreational fishing trips. As a result of the "rare event" nature of these trips, generalized angler surveys, such as the MRFSS, aimed at estimating catch and effort for all species do not produce very precise estimates for many shark species. In addition to low precision, shark catch estimates derived from MRFSS may suffer from biases associated with sampling under-coverage of shark tournaments, since MRFSS interviews are not conducted at tournament sites. Specialized surveys are often needed to achieve the desired level of statistical precision. For example, the NMFS LPS was specifically designed to collect information on recreational fishing directed at highly migratory species (e.g., tunas, billfishes, swordfish, and sharks). Also, unlike the MRFSS, LPS dockside interviews are conducted at HMS tournaments. This specialization has allowed the higher levels of sampling needed to provide more precise landings estimates of pelagic sharks such as shortfin mako, common thresher, and blue sharks from Maine through Virginia. However, for shark species less commonly encountered by recreational anglers, including porbeagle, even a specialized survey such as the LPS cannot produce precise landings estimates. A mandatory census approach that accounts for every fish landed (both during and outside of tournaments) would be needed instead of a survey if precision is desired on the small recreational landings of these extremely rare event species. Despite the identified shortcomings associated with the numbers presented in Tables 3.24 and 3.26, these numbers still represent the best available data on recreational fishing catch for porbeagle sharks. The fact that only 2 landed fish were observed and only 20 were reported as released alive during 18,626 LPS dockside interviews conducted from 2005 through 2009 suggests that porbeagles are very rarely encountered by recreational anglers from Virginia through Maine.

Results for the NE Atlantic stock indicate that the stock is depleted but is projected to remain stable under the TAC of 436 tons (t) (ICES/ICCAT, 2009). Furthermore, ICES/ICCAT (2009) determined that reductions in fishing mortality would allow the population to rebuild. The TAC of 436t referred to in ICES/ICCAT (2009) is no longer applicable as new regulations setting the TAC at zero in domestic waters and prohibiting EU vessels from fishing for, retaining on board ships, trans-shipping

(e.g., transferring from one ship to another), and landing porbeagle sharks in international waters were implemented by the European Union (EU) on January 14, 2010 (EU, 2010).

Although information on the southern hemisphere stocks is limited, data for the SE Atlantic suggest, through catch rate patterns, that the stock has stabilized; however, ICES/ICCAT (2009) determined that the data are too limited to adequately assess their status at this time. In addition, the SW data suggest a potential decline has been observed through the CPUE reported for the Uruguayan fishing fleet, but the data are too limited to adequately assess their current status (ICES/ICCAT, 2009). Camhi *et al.* (2009), as referenced by HSUS, reports that porbeagle fins are neither highly valued, nor a significant portion of the Hong Kong shark fin trade.

Conclusion

Although the petitioners claim that overutilization of porbeagle sharks for commercial and recreational purposes in the form of historical and continued overfishing requires that the species be listed under the ESA, available information indicates that porbeagle shark population trends are stable or increasing globally, and that protections for the species are increasing in these areas as well; therefore, the petitions do not present substantial information indicating that the petitioned actions of listing the full porbeagle shark species or DPSs proposed by WEG or HSUS under the ESA due to historical and current overutilization may be warranted at this time.

Predation and Disease

The petitions assert that disease or predation are not likely a threat to this species. As indicated in the petitions, porbeagle sharks are an apex predator, and other than possible predation by white sharks and orcas, humans are likely to be the only significant predator (CITES, 2007). The petitions also state that studies have shown some incidence of cancer in sharks, although actual rates of cancer in sharks have not been determined, and evidence of cancer in porbeagles is limited (National Geographic, 2003).

Conclusion

Available information on disease and predation on porbeagles is limited; however, available information indicates that it is not likely that these factors pose a significant threat to the species; therefore, the petitions do not present substantial information indicating that the petitioned actions of listing the full porbeagle shark species or DPSs proposed by WEG or HSUS under the ESA due to disease or predation may be warranted at this time.

Inadequacy of Existing Regulatory Mechanisms

The petitions assert that inadequacy of existing regulatory mechanisms requires that the porbeagle shark be listed under the ESA. As indicated by WEG, porbeagles are a species of concern (SOC), and SOC status does not carry any protections under the ESA. The WEG petition states that "the species therefore lacks Federal protection in the U.S." The Magnuson-Stevens Fishery Conservation and Management Act (MSA) regulates fisheries in Federal waters in the United States, and states generally have authority within state waters. Generally, Regional Fishery Management Councils construct FMPs for each fishery under their jurisdiction, and these plans are designed to allow fisheries to thrive while preventing overfishing. FMPs are implemented by NMFS. Because porbeagle sharks are considered to be a highly migratory species, as defined under the MSA, NMFS, as delegated by the Secretary of Commerce, and not the Regional Fishery Management Councils, manages the species. As such, the porbeagle shark is included in the 2006 Consolidated HMS FMP. The 2006 Consolidated HMS FMP regulates fishing for highly migratory species in Federal waters by measures such as quotas, permit requirements, retention limits, time/area closures, prohibited species, observer coverage, and fishermen and dealer reporting. The FMP also requires that all sharks be landed with all fins naturally attached. Porbeagle sharks are an authorized species, and the Federal commercial fishery for porbeagle sharks is regulated by a base commercial quota of 1.7 mt dw per year. This quota can only be harvested by fishermen who possess a Federal limited access shark permit when the fishing season, as announced by NMFS, is open. In other words, porbeagle sharks are managed through the MSA by the 2006 Consolidated HMS FMP, and regulations are implemented and enforced by NMFS; therefore, porbeagle sharks do not lack Federal protection in the United States.

HSUS states that despite NMFS management, porbeagle sharks are continuing to decline in the Northwest Atlantic, and thus, protections are inadequate. The most recent stock assessment report for porbeagle sharks reports that although biomass is depleted, trends indicate that it is currently increasing (ICES/ICCAT, 2009). NMFS' regulatory mechanisms for porbeagle sharks are a factor in allowing biomass to increase by preventing overfishing; therefore, NMFS regulatory measures are adequate.

ICES/ICCAT (2009) note that in Canada and internationally, management efforts and regulations that benefit porbeagle sharks are increasing. Canada has implemented closures of porbeagle shark mating grounds to targeted fisheries, and also lowered the TAC to 185t from a maximum sustainable yield (MSY) of 250t (ICES/ICCAT, 2009). Furthermore, ICES/ICCAT (2009) considers Canada's harvest regime of porbeagle sharks in Canada's Exclusive Economic Zone (EEZ) to be conservative.

Conclusion

Although the petitioners claim that inadequacy of existing regulatory mechanisms warrants that the porbeagle shark be listed under the ESA, the petitions do not present substantial information indicating that the petitioned actions either for DPSs proposed by WEG or HSUS or the full species may be warranted. When considering new and existing U.S., Canadian, and EU regulations and fisheries management mechanisms, and taking into account the most recent stock assessment by ICES/ICCAT (2009) which indicates that stocks have stabilized or increased, it is reasonable to conclude that the existing regulatory mechanisms are adequately protecting porbeagle sharks; therefore, the petitioned actions do not appear to be warranted at this time.

Other Natural or Manmade Factors Affecting Its Existence

The petitions contend that "biological vulnerability," in the form of low productivity, isolated populations, and low population density, is a natural factor that is affecting the continued existence of porbeagle sharks. As stated earlier, ICES/ICCAT (2009) determined that the stocks were generally stable or increasing in biomass. Genetic studies indicate that there is no differentiation between the North Atlantic stocks, which indicates that there is the potential for some mixing in the North Atlantic; therefore, the threat of isolated populations does not appear to be a factor for this HMS in the northern hemisphere (Pade *et al.*, 2006; Testerman *et al.*, 2007). Available information for the southern hemisphere indicates that the distribution of porbeagle sharks in the South Atlantic appears to be continuous around the tips of South America and southern Africa, and although genetic

data are lacking, the porbeagle sharks in the southern hemisphere do not appear to be isolated (ICES/ICCAT, 2009). Considering the highly migratory nature of this species, isolation does not appear to be a factor for decline. Low productivity is an aspect of the species' life history that has the potential to make the species more vulnerable to specific threats; however, this trait along with all other life history parameters is evaluated and addressed in management and conservation actions. As indicated by literature cited in the HSUS petition, female porbeagle sharks mature at approximately 13 years and males at 8 years in the Northwest Atlantic Ocean (Campana and Gibson, 2005; Campana *et al.*, 2003; Natanson *et al.*, 2001). They produce an average litter size ranging from two to six pups, and reproduce annually (Jensen *et al.*, 2002; Gibson and Campana, 2005). A recent Ecological Risk Assessment for Atlantic pelagic sharks found that porbeagle sharks ranked among the less vulnerable species in terms of their biological productivity and susceptibility to pelagic longline fisheries (Cortes *et al.*, 2010). Available information is insufficient to indicate that there has been any decrease in productivity of porbeagle sharks.

Conclusion

Although the petitions contend that "biological vulnerability" is a natural factor that is affecting the continued existence of porbeagle sharks, available information does not indicate that these factors pose a significant threat to the species. It does not appear that porbeagle populations are isolated, and the most recent stock assessment reports that biomass is either stable or increasing. In addition, available information does not indicate that there has been any decrease in porbeagle shark productivity. While much of the life history information presented is specific to Northwest Atlantic population, it is reasonable to assume that life history parameters for other porbeagle shark populations are similar to those of the Northwest Atlantic population. Therefore, the petitions do not present substantial information indicating that the petitioned actions for either DPSs proposed by WEG or HSUS or the full species may be warranted at this time.

Petition Finding

After reviewing the information contained in the petitions, as well as information readily available in our files, we have determined that the petitions do not present substantial scientific or commercial information indicating that the petitioned actions may be warranted. While the petitions assert that porbeagle sharks have suffered disastrous declines and that they are continuing to decline, we do not believe that the information presented in the petitions is substantial. This finding is supported by information contained within the ICES/ICCAT Stock Assessment Report (2009), which indicates increases in biomass in some stocks and stability in others. As stated previously, the United States has managed porbeagle shark through the HMS FMP since 2006. The Federal commercial fishery for porbeagle sharks is regulated by a base commercial quota of 1.7 mt dw per year. This quota can be harvested only by fishermen who possess a Federal limited access shark permit when the fishing season, as announced by NMFS, is open. In addition, Canada and the EU are increasing protections for porbeagle sharks internationally. Increasing numbers and stability in these stocks, coupled with new and continuing national and international management efforts, also support our conclusion that the petition does not present substantial information indicating that the petitioned actions may be warranted. If new information becomes available to suggest that porbeagle sharks may, in fact, warrant listing under the ESA, we will reconsider conducting a status review of the species.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 7, 2010.

Eric C. Schwaab,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 2010–16933 Filed 7–9–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–2010]

Foreign-Trade Subzone 116A—Port Arthur, TX; Expansion of Manufacturing Authority; Motiva Enterprises, LLC (Oil Refinery)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Foreign-Trade Zone of Southeast Texas, Inc., grantee of FTZ 116, requesting an expansion of the scope of manufacturing authority approved within Subzone 116A, on behalf of Motiva Enterprises, LLC in Port Arthur, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on July 1, 2010.

Subzone 116A (1,005 employees, 250,000 barrel per day capacity) was approved by the Board in 1993 for the manufacture of fuel products and certain petrochemical feedstocks (Board Order 668, 59 FR 61, 12–3–1994, as amended by Board Order 740, 60 FR 26716–26717, 5–18–1995 and Board Order 1116, 65 FR 52696–52697, 9–30–2000). The subzone consists of six sites in Jefferson and Hardin Counties, Texas: *Site 1:* (3,036 acres) Port Arthur refinery complex, Jefferson County; *Site 2:* (402 acres) Port Neches Terminal, Jefferson County; *Site 3:* (126 acres) Port Arthur Terminal, Jefferson County; *Site 4:* (37 acres) Sour Lake underground LPG storage facility, Hardin County; *Site 5:* (63 acres) Seventh Street tank facility, Jefferson County; and, *Site 6:* (97 acres) National Station Extension Tank Farm, Jefferson County.

The current request involves the construction of additional crude distillation, coking, integrated hydrocracker/diesel hydrocracker, naphtha, catalytic feed, sulfur recovery, power generation and storage units within Site 1. The proposed expansion would increase the overall crude distillation capacity allowed under FTZ procedures to 600,000 barrels per day. No additional feedstocks or products have been requested.

Zone procedures would exempt production associated with the proposed expansion from customs duty payments on the foreign products used in exports. On domestic sales, the company would be able to choose the customs duty rates for certain petrochemical feedstocks (duty-free) by admitting foreign crude oil in non-privileged foreign status. The application indicates that the savings from zone procedures help improve the refinery's international competitiveness.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is September 10, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to September 27, 2010.

A copy of the application will be available for public inspection at the

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: July 1, 2010.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–16915 Filed 7–9–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–825]

Stainless Steel Bar From Brazil: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 16, 2010, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain stainless steel bar from Brazil. The review covers one producer/exporter of the subject merchandise, Villares Metals S.A. (VMSA). The period of review (POR) is February 1, 2008, through January 31, 2009. We gave interested parties an opportunity to comment on our preliminary results. We received one comment. The final weighted–average dumping margin for VMSA is listed below in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: July 12, 2010.

FOR FURTHER INFORMATION CONTACT: Catherine Cartsos or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–1757 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 16, 2010, the Department published the preliminary results of its administrative review of the antidumping duty order on certain stainless steel bar from Brazil. *See Stainless Steel Bar From Brazil: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 12514 (March 16, 2010) (*Preliminary Results*). We invited interested parties to comment on the Preliminary Results. On May 5, 2010, we released a post–preliminary analysis in which we altered the cost–of-production methodology from that which we applied for the *Preliminary Results.* See discussion below. On May 13, 2010, we received a case brief from the petitioners (Carpenter Technology Corporation, Valbruna Slater Stainless, Inc., Electralloy Corporation, a Division of G.O. Carlson, Inc., and Universal Stainless). We did not receive a request for a hearing from any interested party.

The Department is conducting this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The scope of the order covers stainless steel bar (SSB). The term SSB with respect to the order means articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons or other convex polygons. SSB includes cold–finished SSBs that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process. Except as specified above, the term does not include stainless steel semi–finished products, cut–length flat–rolled products (*i.e.*, cut–length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections. The SSB subject to the order is currently classifiable under subheadings 7222.10.0005, 7222.10.0050, 7222.20.0005, 7222.20.0045, 7222.20.0075, and 7222.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Alternative Cost Methodology

In our Preliminary Results we relied on our standard methodology of comparing U.S. prices to monthly home–market prices (see *Preliminary Results*, 75 FR at 12516), and we compared the home–market prices to POR costs for the cost–of-production test under section 773(b)(1) of the Act. We indicated in the *Preliminary Results* that we would consider applying an alternative cost methodology after analyzing product–specific quarterly cost information. We announced in the *Preliminary Results* that we would release revised analysis if we found it appropriate to use quarterly costs, based on VMSA's supplemental cost data, and that we would give the parties an opportunity to comment on any revised analysis prior to the final results. See *Preliminary Results*, 75 FR at 12516.

Subsequent to our *Preliminary Results*, we analyzed VMSA's quarterly cost data and determined that the use of the alternative cost methodology is appropriate in this case because the changes in the quarterly cost of manufacture were significant and we can reasonably link the prices of sales made during the quarters with the production costs during the same quarters. See, *e.g., Stainless Steel Plate in Coils From Belgium: Final Results of Antidumping Duty Administrative Review*, 73 FR 75398, 75399 (December 11, 2008), and *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 74 FR 6365 (February 9, 2009). Accordingly, we applied the cost test using quarterly average costs and home–market transaction prices. Further, consistent with our practice in reviews, we continued to compare monthly average home–market prices to individual U.S. prices in the calculation of the margin but confined those comparisons to the same quarter. See *Stainless Steel Sheet and Strip in Coils From Mexico; Preliminary Results of Antidumping Duty Administrative Review and Intent Not To Revoke Order in Part*, 74 FR 39622, 39629 (August 7, 2009) (unchanged in *Stainless Steel Sheet and Strip in Coils From Mexico: Final Results of Antidumping Duty Administrative Review*, 75 FR 6627 (February 10, 2010)). A detailed explanation of our analysis can be found in the May 5, 2010, memorandum entitled "Cost of Production and Constructed Value Calculation Adjustments for the Post–Preliminary Analysis" and the May 5, 2010, memorandum entitled "Post Preliminary Calculations Analysis Memorandum"

which were released to interested parties for comment.

Based on our cost–of-production analysis, we disregarded below–cost sales by VMSA in the home market.

Analysis of Comments Received

In their case brief, the petitioners claim that the Department made a ministerial error by neglecting to reduce the U.S. gross unit price for movement expenses VMSA reported under the computer variable for U.S. duties in calculating the net U.S. price for constructed export–price transactions, thereby resulting in an understatement of VMSA's dumping margin. The petitioners request that the Department correct this ministerial error for the final results of the review.

We reviewed the petitioners' allegation and agree that correction of the error is appropriate. Accordingly, for the final results we have recalculated the net U.S. price for constructed export–price transactions by reducing the U.S. gross unit price for these movement expenses. See Final Analysis Memorandum, dated concurrently with this notice, for detailed information on this change.

Final Results of Review

As a result of our review, we determine that the weighted–average dumping margin for VMSA is 3.70 percent for the period February 1, 2008, through January 31, 2009.

Assessment Rates

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated importer/customer–specific assessment rates for these final results of review. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each reported importer or customer. We will instruct CBP to assess the importer/customer–specific rate uniformly, as appropriate, on all entries of subject merchandise made by the relevant importer or customer during the POR. See 19 CFR 351.212(b).

The Department clarified its "automatic assessment" regulation on May 6, 2003. This clarification will apply to entries of subject merchandise during the POR produced by VMSA for which VMSA did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries of VMSA–produced merchandise at the all–others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

The Department intends to issue instructions to CBP 15 days after the publication of these final results of review.

Cash–Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of SSB from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash–deposit rate for VMSA will be 3.70 percent; (2) for previously reviewed or investigated companies not listed above, the cash–deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less–than-fair–value investigation but the manufacturer is, the cash–deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) if neither the exporter nor the manufacturer has its own rate, the cash–deposit rate will be the all–others rate for this proceeding, 19.43 percent. See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar From Brazil*, 59 FR 66914 (December 28, 1994). These deposit requirements shall remain in effect until further notice.

Notification to Parties

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These final results of administrative review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 1, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–16912 Filed 7–9–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1689]

Grant of Authority For Subzone Status Materials Science Technology, Inc. (Specialty Elastomers and Fire Retardant Chemicals) Conroe, Texas

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the City of Conroe, Texas, grantee of FTZ 265, has made application to the Board for authority to establish a special-purpose subzone at the specialty elastomer manufacturing and distribution facility of Materials Science Technology, Inc., located in Conroe, Texas, (FTZ Docket 46–2009, filed October 27, 2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 57149, 11/4/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and

that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of specialty elastomers and fire retardant chemicals at the facility of Materials Science Technology, Inc., located in Conroe, Texas (Subzone 265C), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 22nd day of June 2010.

Paul Piquado

Acting Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2010–16914 Filed 7–9–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XR52

Marine Mammals; File No. 14534

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that NOAA Office of Science and Technology, Silver Spring, MD (Responsible Party: Ned Cyr, Director) has been issued a permit to conduct research on marine mammals in the North Pacific Ocean.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On September 11, 2009, notice was published in the **Federal Register** (74 FR 46745) that a request for a permit to conduct research on a variety of marine mammals had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit allows research on a variety of marine mammals, and involves studies of sound production, diving, responses to sound, and other behavior. The research is focused in the waters within the U.S. Navy's Southern California Range Complex, and primarily near the vicinity of San Clemente Island. The experimental design involves temporarily attaching individual recording tags to measure vocalization, behavior, and physiological parameters as well as sound exposure. Behavior will be measured before, during, and after carefully controlled exposures of sound in conventional playback experiments. The permit is valid for five years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment. Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on June 29, 2010.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 6, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–16920 Filed 7–9–10; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX38

Marine Mammals; File No. 14791

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that Douglas Nowacek, Ph.D., Duke University Marine Lab, Beaufort, NC, 28516, has been issued a permit to conduct research on North Atlantic right whales (*Eubalaena glacialis*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376;

Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281–9328; fax (978) 281–9394; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 24, 2009, notice was published in the **Federal Register** (74 FR 61331) that a request for a permit to conduct research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The primary research objective is to determine: (1) the natural behavioral patterns right whales exhibit to approaching vessels and (2) the ability of right whales to localize and detect vessels and other sounds in their environment. Researchers will conduct passive recording, attach a digital sound recording tag (DTAG) via suction cup, and collect samples of exhaled air and sloughed skin on up to 40 right whales

per year. Up to 90 right whales may be incidentally harassed during the research. The research will take place along the eastern seaboard of the U.S. and the permit is issued for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment. Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on July 1, 2010.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 6, 2010.

Tammy C. Adams,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2010–16921 Filed 7–9–10; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No.CPSC–2010–0071]

Petition Requesting Revision of Bunk Bed Standard To Incorporate Requirements for Head and Neck Entrapment Testing in Spaces Created by Side Structures, Including Ladders

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission ("Commission," "CPSC," or "we") received a petition requesting the Commission to initiate a rulemaking to revise the Commission's regulations regarding bunk beds, codified under both the Consumer Product Safety Act ("CPSA") and the Federal Hazardous Substances Act ("FHSA") at 16 CFR 1213, 1500, and 1513 (the "Bunk Bed Standard"), to incorporate requirements for head and neck entrapment testing in spaces created by side structures that are provided with a bunk bed, including ladders. The Commission invites written comments concerning this petition to initiate a rulemaking to revise the Bunk Bed Standard.

DATES: Comments on the petition must be received by September 10, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0071, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Rocky Hammond, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland, 20814; telephone (301) 504–6833, e-mail *rhammond@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

The Commission received a petition from Carol Pollack-Nelson, PhD of Independent Safety Consulting ("Petitioner") requesting that the Commission initiate a rulemaking to revise the regulations related to bunk beds, codified at 16 CFR parts 1213, 1500, and 1513 ("Bunk Bed Standard"), to incorporate requirements for head and neck entrapment testing in spaces created by side structures that are provided with a bunk bed, including ladders. The Commission regulates bunk beds under both the Federal Hazardous Substances Act ("FHSA") (16 CFR 1500 and 1513), for bunk beds intended for use by children, and the Consumer Product Safety Act ("CPSA") (16 CFR 1213), for bunk beds not specifically intended for children. The regulations under both statutes are virtually identical.

Petitioner acknowledges that the risk of injury caused by head and neck entrapment in the end structures of bunk beds is quite low in compliant products because of the Bunk Bed Standard, but argues that same risk of injury continues to exist with regard to the space between a ladder and the side of the bed, which the standard does not address. The petition identifies 3 fatalities, and 4 other incidents of children whose head and/or neck were entrapped between the side of the bed and a bunk bed ladder. The hazard purportedly arises from the potential that a child's neck may become entrapped if the "child's head is able to pass (partially) through the space created by a horizontal ladder rung and the top of the mattress, [and] the neck * * * drop[s] into the gap between the vertical ladder post and the side of the mattress * * *. Further contributing to the hazard pattern is the fact that the child's chin hooks over the vertical post of the ladder and is pinned at the back of the head by the mattress. The weight of the body outside the bed pulls the head and neck against the vertical ladder post. All of these factors together contribute to the neck entrapment and resulting strangulation." Petitioner states that assessing the entrapment hazard requires use of a neck probe that simulates the dimensions of the smallest user's neck. Using anthropometry data collected on children in the United States, the Petitioner argues that any space greater than 1.9 in (4.8 cm) can pose a risk of neck entrapment in bunk bed side structures.

Petitioner concludes that, while the hazard of head and neck entrapment on bunk beds and the methods of testing for a potential hazard are known to the industry, and data on injuries involving side structures have been on record with the CPSC for decades, the hazard of side structure entrapments on bunk beds has not been addressed in the Bunk Bed Standard. Petitioner argues that deaths have occurred and will continue to occur unless the Bunk Bed Standard is revised to include testing for head and neck entrapment in spaces created by side structures.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833. The petition

is also available on the CPSC Web site at *http://www.cpsc.gov.*

Dated: July 6, 2010.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2010–16918 Filed 7–9–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive or Partially Exclusive Licensing of a U.S. Patent Application

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Patent 7,632,659, which issued on December 15, 2009, entitled "Use of *Shigella* Invaplex to Transport Functional Proteins and Transcriptionally Active Nucleic Acids Across Mammalian Cell Membranes In Vitro and In Vivo," and U.S. Patent Application Serial No. 12/563,794, entitled "Use of *Shigella* Invaplex to Transport Functional Proteins and Transcriptionally Active Nucleic Acids Across Mammalian Cell Membranes In Vitro and In Vivo," filed September 21, 2009. U.S. Patent Application Serial No. 12/563,794 is a continuation application of U.S. Patent 7,632,659. Foreign rights are also available for licensing (PCT/US2004/039100). The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The inventions relate to the use of Invaplex to transport materials, including functional proteins and biologically active nucleic acids, across eukaryotic cell membranes.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–16889 Filed 7–9–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive or Partially Exclusive Licensing of a U.S. Patent Application

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Patent Application Serial No. 11/727,486, entitled "Artificial Invaplex," filed March 27, 2007. Foreign rights are also available for licensing (PCT/US2007/007482). The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to an artificial invasin complex hat can facilitate the transport of biomolecules, therapeutics and antibiotics across cell membranes in a manner similar to native *Shigella* Invaplex.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–16897 Filed 7–9–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive or Partially Exclusive Licensing of a U.S. Patent Application

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Patent Application Serial No. 12/149,076, entitled "Combinations of Gene Deletions for Live Attenuated *Shigella* Vaccine Strains," filed April 25, 2008. Foreign rights are also available for licensing (PCT/US2008/005342). The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates generally to *Shigella* vaccine, strains, their use in vaccines, and the methods for treatment of dysentery.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–16894 Filed 7–9–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive or Partially Exclusive Licensing of a U.S. Patent Application

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Patent Application Serial No. 11/132,199, entitled "Construction of Live Attenuated *Shigella* Vaccine Strains that Express CFA/I Antigens (CFAB and CFAE) and the B Subunit of Heat-Labile Enterotoxin (LTB) From Enterotoxigenic *E. Coli,*" filed May 19, 2005. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to materials and methodologies for preparing multivalent vaccines, recombinant DNA expression

products and more particularly to vector constructs which effectively express the cfaB, cfaE and LTB proteins in *Shigella* spp. without affecting the ability of the *Shigella* strain to invade cells of the colonic epithelium following oral administration to humans.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–16891 Filed 7–9–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of Final Environmental Impact Statement for the Proposed Rio del Oro Specific Plan Project, in Sacramento County, CA, Corps Permit Application number SPK–1999–00590

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of availability.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers (USACE), Sacramento District has prepared a Final Environmental Impact Statement (FEIS) for the Rio del Oro Specific Plan Project, a proposed master-planned, mixed use development within south-eastern Sacramento County.

On December 8, 2006, USACE published a notice in the **Federal Register** (71 FR 71142), informing the public of the availability of the Draft Environmental Impact Statement (DEIS) that analyzes the potential effects of implementing each of five alternative scenarios for a mixed-use development in the approximately 3,828-acre Rio del Oro Specific Plan Area. In response to new information and comments received on the DEIS, on May 7, 2008, USACE published a notice in the **Federal Register** (73 FR 25687) which provides new information and additional analyses related to utilities and service systems (specifically water supply) and provides additional analyses of each of the five alternative scenarios analyzed in the 2006 DEIS.

The FEIS has been prepared to respond to comments received from agencies, organizations, and members of the public on the 2006 DEIS and 2008 SDEIS, and to present corrections, revisions, and other clarifications and amplifications of the 2006 DEIS and 2008 SDEIS, including minor project modifications made in response to these comments and as a result of the applicants' ongoing planning efforts.

The FEIS has been prepared as joint documents with the City of Rancho Cordova (City). The City is the local agency responsible for preparing an Environmental Impact Report in compliance with the California Environmental Quality Act (CEQA). The USACE is the lead Federal agency responsible for the FEIS and information contained in the DEIS, SDEIS and FEIS serves as the basis for a decision regarding issuance of an individual permit under section 404 of the Clean Water Act. It also provides information for Federal, State and local agencies having jurisdictional responsibility for affected resources. All incoming comments on the FEIS will be considered by USACE and responses will be provided for substantive issues raised which have not been addressed in the DEIS, SDEIS or FEIS.

DATES: All written comments must be postmarked on or before August 9, 2010.

ADDRESSES: Comments may be submitted in writing to: Lisa M. Gibson, U.S. Army Corps of Engineers, Sacramento District, Regulatory Division; 1325 J Street, Room 1480, Sacramento, CA 95814–2922, or via e-mail to *Lisa.M.Gibson2@usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Lisa M. Gibson, (916) 557–5288, or via e-mail at *Lisa.M.Gibson2@usace.army.mil.*

SUPPLEMENTARY INFORMATION: Elliott Homes, Inc., and GenCorp, the project applicants, are requesting a Section 404 individual permit from USACE for the placement of fill material into 27.903 acres of waters of the United States for the construction of the Rio del Oro Specific Plan project, which involves the construction of a mixed use development that supports a combination of employment generating uses, retail and supporting services, recreational uses, and a broad range of residential uses and associated infrastructure and roads on an approximately 3,828-acre site in eastern Sacramento County, south of U.S. Highway 50.

The FEIS is available for review at the following locations:

(1) An electronic version of the FEIS may be downloaded and reviewed at the USACE, Sacramento District Web site: *http://www.spk.usace.army.mil/organizations/cespk-co/regulatory/EISs/EIS-index.html:*

(2) A hardcopy of the FEIS will be available for review by appointment only at USACE, Sacramento District, 1325 J Street, Sacramento, CA 95814–2922. To schedule an appointment please contact Lisa M. Gibson at (916) 557–5288.

(3) A hardcopy of the FEIS will be available for review at the City of Rancho Cordova City Hall, Planning Department, 2729 Prospect Park Drive, Rancho Cordova, CA 95670.

Dated: June 24, 2010.

Thomas C. Chapman,

Colonel, U.S. Army, District Engineer.

[FR Doc. 2010–16899 Filed 7–9–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant a Field of Use Exclusive License of a U.S. Government-Owned Patent Application

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e), and 37 CFR 404.7(a)(1)(i), announcement is made of the intent to grant a field of use exclusive, revocable license for the field of shigella vaccine development to U.S. Patent Application No. 11/727,486 entitled "Artificial Invaplex," filed March 27, 2007, and related foreign patent applications (PCT/US2007,007482) to Sanofi Pasteur S.A., with its principal place of business at 2 Avenue du Pont Pasteur, 69007 Lyon, France.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, *Attn:* Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664. For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, within 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (*see* **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–16887 Filed 7–9–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 10, 2010.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 6, 2010.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: New.

Title: Student Assistance General Provisions—Subpart A—General.

OMB #: Pending.

Frequency: On Occasion.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 600,892.

Burden Hours: 105,376.

Abstract: The proposed regulations require an institution to report annually for each student who completes a program that leads to gainful employment in a recognized occupation identifier information about student completers, the Classification of Instructional Programs (CIP) code for each occupational training program, the completion date, and information about the amount of private education loans and institutional financing incurred by each graduate. In addition, the proposed regulations would require the following disclosures on the institution's Web site: the name of each occupational training program and links to the Department of Labor's O–Net site to obtain occupation profile data using a Standard Occupational Classification (SOC) code, information about on-time graduation rates for students entering the program, cost information (including tuition fees, room and board, and other institutional costs incurred for enrolling in the program), placement rate information for students who completed the program, and the median debt incurred by students who completed the program during the preceding three years. The institution must identify separately the median Title IV, Higher Education Act of 1965, as amended (HEA) loan debt from the private education loan debt and institutional financing plans.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 4317. 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 *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov;* Tel. 202–401–0526. 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. 2010–16874 Filed 7–9–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, U.S. Department of Education.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice proposing to revise the system of records notice for the Hotline Complaint Files of the Inspector General (18–10–04), 64 FR 30157–59 (June 4, 1999). The Department proposes to amend this system of records notice by: (1) Adding that a purpose of the system is to report on complaints and allegations related to American Recovery and Reinvestment Act of 2009 (ARRA) funds to the Recovery Accountability and Transparency Board (RATB) as established by the ARRA (Pub. L. 111–5); (2) adding a new routine use to allow the disclosure of ARRA-related complaints and allegations to the RATB; (3) adding a new routine use to allow for disclosure of information in connection with response and remedial efforts in the event of a data breach in accordance with Office of Management and Budget (OMB) requirements in M–07–16 (May 22, 2007); (4) revising the routine use "Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as amended (HEA)" to allow the disclosure of information to an educational institution or a school that is or was a party to an agreement with the Secretary of Education pursuant to the HEA; and (5) updating the address of the System Manager.

DATES: The Department seeks comments on the proposed, new routine uses of the information in the altered system of records described in this notice, in accordance with the requirements of the

Privacy Act. We must receive your comments on or before August 11, 2010.

The Department filed a report describing the altered system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, OMB on July 7, 2010. This altered system of records will become effective at the later date of—(1) The expiration of the 40-day period for OMB review on August 16, 2010 unless OMB waives 10 days of its 40-day review period in which case on August 6, 2010, or (2) August 11, 2010, unless the system of records needs to be changed as a result of public comment or OMB review. The Department will publish any changes to the routine uses that result from public comment or OMB review of this notice.

ADDRESSES: Address all comments about the proposed routine uses to this altered system of records to William Hamel, Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., room 8093, PCP building, Washington, DC 20202–1510. If you prefer to send comments by e-mail, use the following address: *comments@ed.gov.*

You must include the term "Hotline Complaint Files" in the subject line of your electronic message.

During and after the comment period, you may inspect all public comments about this notice at the U.S. Department of Education, PCP Building, room 8166, 500 12th Street, SW., Washington, DC 20202–0028, between the hours of 8:00 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate accommodation or auxiliary aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Shelley Shepherd, Assistant Counsel to the Inspector General, 400 Maryland Avenue, SW., room 8166, PCP building, Washington, DC 20202–1510. Telephone: (202) 245–7077. If you use a telecommunications device for the deaf (TDD), you can call the Federal Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act (5 U.S.C. 552a) requires the Department to publish in the **Federal Register** this notice of an altered system of records (5 U.S.C. 552a(e)(4) and (11)). The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to information about an individual that contains individually identifiable information that is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a "record," and the system, whether manual or computer-based, is called a "system of records."

The Privacy Act requires each agency to publish a notice of a system of records in the **Federal Register** and to prepare a report to OMB, whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. The report is intended to permit an evaluation of the probable or potential effect of the proposal on the privacy rights of individuals.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 7, 2010.

Kathleen S. Tighe,

Inspector General.

For the reasons discussed in the preamble, the Inspector General of the U.S. Department of Education publishes a notice of an altered system of records. The following amendments are made to the Notice of an Altered System of Records published in the **Federal Register** on June 4, 1999 (64 FR 30157–30159):

1. On page 30157, 3rd column, under the heading "PURPOSES", the paragraph is revised to read as follows:

PURPOSES:

Pursuant to the Inspector General Act, this system is maintained for purposes of: (1) Maintaining a record of complaints and allegations received concerning Department of Education programs and operations and a record concerning the disposition of those complaints and allegations; and (2) reporting on American Recovery and Reinvestment Act of 2009 related complaints and allegations to the Recovery Accountability and Transparency Board.

2. On page 30158, 1st and 2nd columns, the paragraph labeled "(4) *Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as amended (HEA)",* is revised to read as follows:

"(4) *Disclosure to Public and Private Sources in Connection with the Higher Education Act of 1965, as amended (HEA).* The Department may disclose information from this system of records as a routine use to facilitate compliance with program requirements to any accrediting agency that is or was recognized by the Secretary of Education pursuant to the HEA; to any educational institution or school that is or was a party to any agreement with the Secretary of Education pursuant to the HEA; to any guaranty agency that is or was a party to an agreement with the Secretary of Education pursuant to the HEA; or to any agency that is or was charged with licensing or legally authorizing the operation of any educational institution or school that was eligible, is currently eligible, or may become eligible to participate in any program of Federal student assistance authorized by the HEA.

3. On page 30158, 2nd column, after the paragraph labeled "(6) *Congressional Disclosure",* add two new paragraphs that read as follows:

(7) *Disclosure to the Recovery Accountability and Transparency Board (RATB).* The Department may disclose records as a routine use to the RATB for

purposes of coordinating and conducting oversight of American Recovery and Reinvestment Act of 2009 funds to prevent fraud, waste, and abuse.

(8) *Disclosure in the Course of Responding to Breach of Data.* The Department may disclose records from this system to appropriate agencies, entities, and persons when (a) The Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

4. On page 30158, 3rd column, under the heading "SYSTEM MANAGER AND ADDRESS", the paragraph is revised to read as follows:

SYSTEM MANAGER AND ADDRESS:

Assistant Inspector General for Investigations, Office of Inspector General, U.S. Department of Education, 400 Maryland Avenue, SW., room 8093, PCP building, Washington, DC 20202–1510.

[FR Doc. 2010–16926 Filed 7–9–10; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Publication of State Plan Pursuant to the Help America Vote Act

AGENCY: U.S. Election Assistance Commission (EAC).

ACTION: Notice.

SUMMARY: Pursuant to Sections 254(a)(11)(A) and 255(b) of the Help America Vote Act (HAVA), Public Law 107–252, the U.S. Election Assistance Commission (EAC) hereby causes to be published in the **Federal Register** changes to the HAVA state plan previously submitted by South Dakota.

DATES: This notice is effective upon publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bryan Whitener, Telephone 202–566–3100 or 1–866–747–1471 (toll-free).

Submit Comments: Any comments regarding the plans published herewith should be made in writing to the chief election official of the individual state at the address listed below.

SUPPLEMENTARY INFORMATION: On March 24, 2004, the U.S. Election Assistance Commission published in the **Federal Register** the original HAVA state plans filed by the fifty states, the District of Columbia and the territories of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands. 69 FR 14002. HAVA anticipated that states, territories and the District of Columbia would change or update their plans from time to time pursuant to HAVA Section 254(a)(11) through (13). HAVA Sections 254(a)(11)(A) and 255 require EAC to publish such updates. This is the fifth revision to the state plan for South Dakota.

The amendments to South Dakota's state plan provide for compliance with the Military and Overseas Voter Empowerment Act (MOVE Act); include additional information regarding the state's utilization of HAVA funds for additional personnel working on HAVA related projects and for requirements of HAVA Section 301(a)(4); and reflect how the state intends to use its FY 2010 Requirements Payments. In accordance with HAVA Section 254(a)(12), all the state plans submitted for publication provide information on how the respective state succeeded in carrying out its previous state plan. South Dakota confirms that its amendments to the state plan were developed and submitted to public comment in accordance with HAVA Sections 254(a)(11), 255, and 256.

Upon the expiration of thirty days from July 12, 2010, the state is eligible to implement the changes addressed in the plan that is published herein, in accordance with HAVA Section 254(a)(11)(C). EAC wishes to acknowledge the effort that went into revising this state plan and encourages further public comment, in writing, to the state election official listed below.

Chief State Election Official

Secretary Chris Nelson, Secretary of State, State Capitol, Suite 204, 500 East Capitol, Pierre, SD 57501–5070, Phone: (605) 773–5003, Fax: (605) 773–6580.

Thank you for your interest in improving the voting process in America.

Dated: July 6, 2010.

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

BILLING CODE 6820–KF–C

HAVA State Plan for South Dakota
As required by Public Law 107-252 Section 253(b)
Help America Vote Act of 2002

Chris Nelson
Secretary of State
State Capitol, Suite 204
500 East Capitol
Pierre, SD 57501-5070
(605) 773-5003
hava@state.sd.us

In October of 2002, the 107th Congress passed and President George W. Bush signed into law the Help America Vote Act of 2002 (HAVA). HAVA was designed to strengthen the integrity of elections in America. HAVA created many new requirements for states and counties regarding federal elections -- including mandates for voter registration, provisional voting, accessible voting, and voter education. HAVA also created a new federal agency, the Election Assistance Commission (EAC), to guide the management of federal elections and administer federal funds to states for fulfilling HAVA's Title III requirements.

HAVA requires each state to describe its use of Title II Section 251 payments from the federal government by writing a "state plan." A 17 member HAVA task force developed South Dakota's first state plan in the spring of 2003. The state plan was updated in December of 2004 as HAVA projects matured. Federal elections in 2006 demonstrated the completion of all phases of the state plan.

In March 2007, the Secretary of State certified to the EAC that South Dakota had fulfilled all Title III requirements. The State also notified the EAC that it intended to expand its use of Title II Section 251 funds for other improvements to the administration of federal elections as allowed by HAVA §251(b)(2). The EAC notified the State that it must also revise its state plan to describe such use. The state plan was, therefore, revised in 2007 in a third version.

South Dakota's HAVA state plan was revised in a fourth version in June 2008, which described how the State intended to use the $575,000 payment appropriated to the State by the Omnibus Appropriations Act of 2008.

The South Dakota state plan is hereby revised in a fifth version to meet the requirements of the Military and Overseas Voter Empowerment Act (MOVE). MOVE Section 588(b)(1)(A) requires States to amend their state plans to include, "How the State will comply with the provisions and requirements of the amendments made by the Military and Overseas Voter Empowerment Act." This updated state plan includes additional information regarding the State's utilization of HAVA funds for additional personnel working on HAVA related projects and for meeting the requirements of HAVA Section 301(a)(4). The state plan is also revised to reflect how the State intends to use the $350,000 payment appropriated for the State of South Dakota in the Omnibus Appropriations Act of 2010.

The 13 Required Points of the Help America Vote Act §254(a) and the Requirement of Section 588(b)(1)(A) of the Military and Overseas Voter Empowerment Act

(1) How the State will use the requirements payment to meet the requirements of title III, and, if applicable under section 251(b)(2), to carry out other activities to improve the administration of elections.

(1.1) Programs to educate, provide required information, eliminate overvotes, and provide replacement ballots

Two posters in 48 point font posted in each polling place and instructions posted in each voting booth inform voters when to vote, how to vote, how not to overvote, how to obtain a replacement ballot, how to obtain assistance, the right to a provisional ballot, how to contact an election official if rights are violated, and how to avoid election crimes. Facsimile ballots are available in county auditor offices prior to elections, posted at each polling place, and published in newspapers. Voters can also access their individual sample ballot and polling place information through the Secretary of State's Voter Information Portal (VIP) located on the Secretary of State's website at www.vip.sd.gov. Instructions are printed on all official ballots. AutoMARK ballot marking devices do not mark overvotes. In 2006 the State published full-page newspaper advertisements describing the AutoMARK. For 2010, the Secretary of State's office is working with a Lakota translator to translate public service announcements regarding AutoMARK availability in polling places and voter registration deadline information into the Lakota language. These public service announcements will be sent to Native American radio stations to be aired prior to the Primary and General Elections. The State also educates voters through its website at www.sdsos.gov and provides booklets entitled "General Information on South Dakota Elections." In 2004, the Secretary of State prepared a booklet describing election procedure changes, which was also provided in accessible formats, including 18 point font, Braille, and audio. The Secretary of State also prepares a ballot question pamphlet, made available in alternate formats.

(1.2) Accessible voting device in each polling place

South Dakota counties currently provide the AutoMARK ballot assistant in every polling place for federal elections. The AutoMARK is available for any voter. It assists a broad range of voters in accessing and marking ballots independently and privately. Counties may select other accessible voting devices approved by the State Board of Elections.

HAVA Section 301(a)(4) requires that voting systems used in federal elections, "shall provide alternative language accessibility pursuant to the requirements of section 203 of the Voting Rights Act of 1965" (42 U.S.C. § 1548(a)(4). Pursuant to HAVA Section 301(a)(4) an audio translation of the ballot in the Lakota language was integrated on the AutoMARK ballot marking devices in 11 South Dakota counties for the Primary and General elections in 2006 and 2008. The State and counties will continue to provide the audio translation of the ballot in Lakota on the AutoMARK for all federal elections. HAVA Title I and Title II funds will be used to cover the expenses related to this requirement.

(1.3) Provisional voting

South Dakota Senate Bill 13 became law on July 1, 2003, providing for provisional voting. The processing and counting of provisional ballots is described in SDCL 12-20-5.1 and 12-20-13.1 through 12-20-13.4.

(1.4) Computerized statewide voter registration list

Beginning in January 2004, the State has maintained an electronic statewide voter database of every registered voter updated daily. The statewide file links to the state Unified Judicial System for updates on convicted felons and links to the state Department of Health for updates on deceased persons. Each new voter registration is verified by a driver license number or the last four digits of a social security number. Although the statewide file incorporates many processes to remove duplicate or ineligible registrations, the statewide file relies on local county knowledge for verification. The State continues to seek methods to improve the reliability of the list, including cooperative cross checks with other states.

(1.5) Voter registration cards

The South Dakota voter registration form, prescribed in administrative rule 5:02:03:01 as adopted by the State Board of Elections, was amended to include the HAVA required language and check boxes, including: "Are you a citizen of the United States? Will you be 18 years of age on or before Election Day? If you checked 'no' in response to either of these questions, do not complete this form."

(1.6) Other activities to improve the administration of federal elections

The Secretary of State's office has developed several innovative systems to help improve the administration of federal elections in South Dakota. South Dakota was one of the first states in the country to develop a computerized link to transmit voter registration data between driver license offices and county auditor offices. A voter is able to obtain a driver license and register to vote using one form. An electronic voter registration card is generated, complete with digital signature image, and sent to the county for validation and then transported to the State voter registration file. The State has used both Title I and Title II funds to cover the development and implementation costs for this project.

In 2008, the South Dakota Central Election Reporting System (CERS) was developed. The development of CERS aimed to eliminate duplicate data entry, provide for effective and efficient management of candidate data, allow for the seamless creation of ballot styles utilizing the candidate data, allow for the seamless importation of election results from the county auditors on election night and provide a system for electronic canvassing of results at both the county canvassers and State Board of Canvassers levels. CERS, with its data collection and analysis ability, is linked to the statewide voter file, this gives the public the ability to access data such as their polling place location and sample ballot via the web on the Voter Information Portal (VIP). CERS also provides Election night results down to the precinct level. Result distribution methods include graphical presentations with interactive maps available on the Secretary of State's website, and exports to the Associated Press. To date, the State of South Dakota has invested approximately $350,000 of HAVA Title II and Title I funds for this project.

The Voter Registration Cancellation Notification System (ST22) was developed in 2009 and went into production in January 2010. ST22 allows South Dakota County Auditors and other states to receive voter cancellations records electronically. ST22 contains three components: a data entry page, a data download page and a Driver License Voter Registration (DLVR) cancellation record capture. The system allows South Dakota County Auditors to enter voter registration cancellation information into a data entry page. The voter registration cancellation records for other states are sent electronically by email in PDF format to the appropriate state. The voter registration cancellation records for South Dakota counties are placed on a download page for a county auditor to print. All voter cancellation records from DLVR cards are captured and automatically entered into ST22. Title I funds were used in the development of this project.

The State will continue to use Title II Section 251 funds for additional projects to improve federal elections as determined by the Secretary of State. Counties may use Title II funds for specific projects to improve federal elections with the approval of the Secretary of State.

(2) How the State will distribute and monitor the distribution of the requirements payment to units of local government or other entities in the State for carrying out the activities described in paragraph (1), including a description of—

(A) the criteria to be used to determine the eligibility of such units or entities for receiving the payment; and

(B) the methods to be used by the State to monitor the performance of the units or entities to whom the payment is distributed, consistent with the performance goals and measures adopted under paragraph (8).

County auditors administer federal elections in South Dakota's counties. In order to receive the original Title II Section 251 funds in 2005, South Dakota was required to contribute 5% toward a total amount of the $11,596,803.00 federal grant. The State and counties cooperatively met the match requirement. The State legislature appropriated $198,405.80, which was spent on the development of the statewide electronic voter file. Each county established a reserved account determined by the county's portion of all statewide registered voters. The match contributions from the 66 counties totaled $411,952.20. The amount of federal grant funds reserved by the State for the counties was based on the portion of the total 5% match that the counties contributed. This total was reduced by the cost of the HAVA required voting system, purchased from Election Systems and Software in December of 2005. The remaining Title II amount of $3,235,652.80 was reserved in the state election fund, designated to each county based on its match contribution. The Secretary of State monitors and tracks county expenditures of Title II funds for ongoing Title III acceptable expenses and any expenses related to Secretary of State approved projects for the improvement of the administration of federal elections via the Title II reimbursement form reports sent to the State. Additional documentation is systematically requested through an audit process to ensure the acceptability of funds use. Counties are required to expend county-held accounts on Title III requirements before requesting state-held funds. Counties are reimbursed semi-annually from the state election fund. Any Title II amount in the state election fund not reserved for the counties, may be used for Title III requirements or for improving the administration of federal elections. The State may determine to increase the amount of the election fund reserved for individual counties.

On January 1, 2008, the State credited $4,000 from the state election fund to each of the counties' state-held accounts, for a total of $264,000. Such funds remained in the State election fund, in the state treasury, until expended by the counties in keeping with the existing model that requires counties to report to the State for funds used.

Given the State's experience with monitoring the costs to counties to provide Title III requirements in federal elections in 2006, the State observed that some expenses are consistent for each county, regardless of each county's number of registered voters. Based on that fact and a review of each county's current reserved state-held Title II fund balance, the State determined that the most appropriate method of distributing the Fiscal Year 2008 $575,000 requirements payment was to provide each of South Dakota's 66 counties with an equal share of the appropriated funds. Each county was required to reserve in a county-held account, $458.53, the sixty-sixth part of the $30,263 match requirement. The State credited each county's state-held

balance with $8,712.12, the sixty-sixth part of the $575,000. Each county was required to expend its $458.53 match money on a Title III requirement and report that to the State before accessing its state-held account funds.

Likewise, for the Fiscal Year 2009 requirements payment each county provided $398.73 in match money, the sixty-sixth part of the required $26,316 match. (Per guidance from the EAC, each county added $10.00 to cover interest earned on their match money, bringing each county's total to $408.73 in their county-held account.) Once this money was set aside in a county-held account each county then received $7,575.75 in their state-held account, the sixty-sixth part of the $500,000 provided in the Omnibus Appropriations Act of 2009.

The State and counties will follow the same plan for acquiring and distributing the Fiscal Year 2010 requirements payment. Each county will be requested to provide $279.11 in match money, the sixty-sixth part of the required $18,421 match. (An additional $5.00 will be requested from the counties to cover interest earned on their match money, bringing each county's total match to $284.11.) After the counties have verified to the Secretary of State's Office, by signing a subagreement with the State, that they have set aside their portion of the required match, each county will receive $5,303.03 in their state-held account, the sixty-sixth part of the $350,000 appropriated to the State. Keeping with the State's current subgrant system each county will be required to expend its match money and interest and report to the State prior to accessing its state-held account funds.

If further Title II Section 251 funds are made available to the State, the Secretary of State will determine an appropriate method for funds distribution.

(3) How the State will provide for programs for voter education, election official education and training, and poll worker training which will assist the State in meeting the requirements of title III.

In addition to the ongoing programs described above in (1.1), the State made special efforts to educate the public on the new voting system used for the first time in 2006. The State and counties demonstrated the AutoMARK to voters throughout the State through a variety of venues. Additional efforts may be made in future years. County auditors are trained by the State on HAVA procedures at election workshops and conventions and through publications and e-mails. Advocates for persons with disabilities assist the State in training. Special regional trainings were given in 2006 for the new voting system. County auditors in turn train precinct officials at county election schools. In 2006, the Secretary of State also gave special trainings to precinct workers at regional sessions explaining the new voting system and proper procedures for meeting the needs of voters with disabilities. In 2009, at the County Auditor Election Workshop an AutoMARK refresher course was offered to the auditors and their staff. Similar trainings may be given in future years.

(4) How the State will adopt voting system guidelines and processes which are consistent with the requirements of section 301.

The HAVA task force guided the State on the voting system that would be selected. South Dakota laws and administrative rules have been passed to provide for all Section 301 requirements. The Secretary of State and county auditors manage the processes needed to comply with Section 301.

(5) How the State will establish a fund described in subsection (b) for purposes of administering the State's activities under this part, including information on fund management.

An election fund has been established in the South Dakota State Treasury containing Title II Section 251 funds. Expenditures are made as needed by the Secretary of State, with oversight by the State Auditor, through spending authority granted by the State Legislature. Interest is earned and credited to the fund annually. All expenditures from the fund are subject to state government accounting and audit procedures.

(6) The State's proposed budget for activities under this part, based on the State's best estimates of the costs of such activities and the amount of funds to be made available, including specific information on—

(A) the costs of the activities required to be carried out to meet the requirements of title III;

(B) the portion of the requirements payment which will be used to carry out activities to meet such requirements; and

(C) the portion of the requirements payment which will be used to carry out other activities.

In previous HAVA state plans the State described a budget for projected amounts to fund Title III required programs. All programs were fulfilled within that budget and significant funds remain available to the State and its counties for ongoing HAVA expenses, future voting system purchases, and other improvements to the administration of federal elections.

South Dakota received a Title II Section 251 payment in April of 2005 in the amount of $11,596,803.00. As of September 30, 2009, the State has a total of $6,373,680.68 of Title II funds remaining available. Of this amount $3,350,413.62, is reserved in the counties' state-held Title II accounts.

As of December 31, 2009, the counties reported that $10,271.05 (including interest) remained in reserved county-held match money accounts.

The State expects that costs for the State and the counties will continue and may increase for maintenance of voting equipment, technical support, internet and intranet network connections, and specific design updates. At some future time, the State may need to develop a new computerized voter registration database system. When that might be and what that might cost are imprudent to predict. Potential amendments to HAVA of 2002 may also increase the cost of state compliance with enlarged federal requirements.

The State expects that costs to counties will continue and increase at least at the rate of inflation to prepare and implement federal elections within the framework of the current voting system. When new voting systems are required, counties will face significant additional costs in acquiring the new equipment. The State and counties will work to maintain the current voting system for as long as practicable.

Since the State has fulfilled HAVA's requirements and will continue to do so, the State wishes not to restrict itself unnecessarily through this state plan. New programs to improve the administration of federal elections may develop that have not yet been contemplated. The State

will continue to submit annual financial status and narrative reports to the EAC concerning HAVA grants as required.

With continued conservative management of the HAVA grant funds and the benefit of accumulating interest, the State may be able to indefinitely continue to meet HAVA obligations and continue to improve the administration of federal elections in South Dakota.

(7) How the State, in using the requirements payment, will maintain the expenditures of the State for activities funded by the payment at a level that is not less than the level of such expenditures maintained by the State for the fiscal year ending prior to November 2000.

In previous HAVA state plans, the State described the expense to the State for the State Election Supervisor as maintenance of effort. However, in 2007 the EAC advised that maintenance of effort (MOE) applies specifically to prior expenses that became Title III requirements. HAVA's maintenance of effort requirement is designed to ensure that federal funds do not replace already occurring state or county expenses. With that new understanding, the State clarified that it had no such spending prior to HAVA and, therefore, had no level of spending to maintain.

With the new advisory issued by the EAC on February 19, 2010, regarding MOE pending, the State has once again reviewed the HAVA maintenance of effort issue and has again concluded that the State of South Dakota in State Fiscal Year 2000, had no prior expenses that became Title III requirements. Therefore, the State has no level of spending to maintain.

The pending EAC advisory on MOE states, "MOE tracks State expenditures on a prescribed set of Federal election activities, which includes any funds appropriated by the State to lower tier entities to support those activities. Under this MOE policy, States may exclude lower tier spending from MOE when the funds used by the lower tier entities are not derived from a State appropriation or expenditure."

The State also hereby clarifies that in the State Fiscal Year 2000 no State appropriations were given to the counties for election related expenditures. Therefore, South Dakota's 66 counties also, have no level of spending to maintain.

(8) How the State will adopt performance goals and measures that will be used by the State to determine its success and the success of units of local government in the State in carrying out the plan, including timetables for meeting each of the elements of the plan, descriptions of the criteria the State will use to measure performance and the process used to develop such criteria, and a description of which official is to be held responsible for ensuring that each performance goal is met.

South Dakota has fulfilled the goals described in earlier state plans – including reducing the percentage of overvotes, educating voters on how to avoid and correct ballot errors, providing at least one §301(a)(3)(B) voting device in every polling place for any federal election with the required additional languages, providing provisional voting, posting required notices at polling places as described above in (1.1), removing every person convicted of a felony and sentenced to the adult state penitentiary system from the statewide voter registration list, verifying every new voter registration against either the person's driver license or last four digits of social security number, providing voter registration cards as described above in (1.5), and providing quicker, easier one-form voter registration and updating at driver licensing stations as described above in (1.6).

The Secretary of State and county auditors will continue to monitor these processes. South Dakota is in compliance with federal election law and will continue to meet HAVA requirements and will continue to develop innovative and effective programs to improve the administration of federal elections in the State.

(9) A description of the uniform, nondiscriminatory State-based administrative complaint procedures in effect under section 402.

South Dakota law was written, effective July 1, 2003, to comply with HAVA Section 402. South Dakota Codified Law 12-1-21 thru 12-1-30 provides the procedure for the administrative complaint process. Initial complaints are resolved by the State Board of Elections using an existing administrative complaint process. The alternative dispute process involves judicial appointment of an arbitrator to resolve the complaint.

(10) If the State received any payment under title I, a description of how such payment will affect the activities proposed to be carried out under the plan, including the amount of funds available for such activities.

South Dakota received a Title I Section 101 payment in the amount of $5,000,000 in April of 2003. Title I funds have been used for payments to counties for punchcard voting system buyouts; voter education; statewide voter registration system programming; computer hardware, internet and intranet connection costs for the counties; development of additional systems such as CERS and ST22; training and materials for election personnel; travel for election personnel; salary and expenses for a dedicated state HAVA coordinator; a portion of salary and expenses for additional Secretary of State staff working on HAVA required projects and state plan development. The State may continue to use Title I funds on these programs and for other programs permitted by HAVA §101(b).

As of September 30, 2009 the State's Title I Section 101 funds remaining total was $3,729,789.97.

(11) How the State will conduct ongoing management of the plan, except that the State may not make any material change in the administration of the plan unless the change—

(A) is developed and published in the Federal Register in accordance with section 255 in the same manner as the State plan;

(B) is subject to public notice and comment in accordance with section 256 in the same manner as the State plan; and

(C) takes effect only after the expiration of the 30-day period which begins on the date the change is published in the Federal Register in accordance with subparagraph (A).

The Secretary of State and county auditors will administer this state plan at the direction of the Secretary of State, the State Board of Elections and the HAVA task force members.

(12) In the case of a State with a State plan in effect under this subtitle during the previous fiscal year, a description of how the plan reflects changes from the State plan for the previous fiscal year and of how the State succeeded in carrying out the State plan for such previous fiscal year.

The methods by which the State fulfilled its previous state plans have already been described in this plan. The State anticipates no major changes to its implementation of HAVA, except that Title II Section 251 funds may now be used for additional improvements to the administration of federal elections.

The State has provided voters with the option of an audio translation of the ballot in the Lakota language on the AutoMARK ballot marking devices in 11 counties for the Primary and General elections in 2006 and 2008. Pursuant to HAVA Section 301(a)(4), the State and Counties will continue to provide the audio translation of the ballot in Lakota on the AutoMARK for all federal elections. The State will also provide an audio Lakota translation of voter registration deadlines and public service announcements about the availability of the AutoMARKs at polling places to the Native American radio stations. South Dakota counties required to do so by federal law will continue to provide translations of election announcements on Native American radio stations and continue to provide interpreters at polling places to assist Native American voters.

To assist the counties in meeting the Lakota language requirements the Secretary of State has authorized reimbursement for counties from their Title II HAVA state-held accounts for the following expenses related to the Lakota Language assistance:

1. Translation of election materials in audio format. (SDCL 12-3-9).
2. AutoMARK Lakota expenses.
3. Broadcasting election notices and information in Lakota.
4. Training interpreters in election procedures.
5. Providing interpreters at polling places.
6. Providing oversight of interpreters and use of AutoMARKs containing Lakota audio.
7. Providing interpreters for absentee voting.
8. A coordinator for Lakota language requirements.

Each county will determine how to best meet the Lakota language requirements of the Voting Rights Act. Counties are not required to have expenditures in all eight categories. Individual counties will also determine whether to request Title II reimbursement for allowable Lakota expenditures or pay for the expenses with county general funds.

Reimbursement requests will be submitted to the Secretary of State's office via the HAVA Title II Reimbursement Form.

Section 588(b)(1)(A) MOVE How the State will comply with the provisions and requirements of and amendments made by the Military and Overseas Voter Empowerment Act" to section 254(a) of HAVA.

The Secretary of State's Office is directing the implementation of MOVE, which includes involvement from both the state and county levels. As of March 31, 2010, considerable progress has been made and the State does not anticipate any problems that would prevent implementation of MOVE in South Dakota before the 2010 General Election.

During the State Board of Elections meeting and the subsequent Legislative Rules Hearing, both held in December 2009, the necessary procedural and forms changes, including the Absentee Ballot Application, were made. Included were changes to the application to provide UOCAVA voters the means for requesting the ballot electronically by providing an email address. The changes to the application will go into effect July 1, 2010, so as to not cause confusion during the Primary Election process being held in June.

Legislative changes were also required in order to implement MOVE. At the recommendation of the State Board of Elections, Senate Bill 13 (SB 13) was introduced to the Legislature in January 2010. SB 13 included:

1) Allowing for UOCAVA voters to have their ballot sent electronically;
2) Adding absentee voter log information to the state computerized system and requiring the county auditors to transport the information to the Secretary of State on a daily basis;
3) Removing the requirement to send absentee ballots for two subsequent general election cycles following the initial receipt of a UOCAVA absentee ballot application;
4) Changing the number of days by which the official ballot shall be in the possession of the county auditor from 42 to 45 days; and
5) To define the penalty for providing the ballot access link or the UOCAVA ballot to anyone other than the intended UOCAVA voter.

SB 13 was signed into law on March 4, 2010, with an effective date of July 1, 2010.

The MOVE Act requires UOCAVA voters be allowed to request voter registration and absentee ballot application information by mail or electronically. Election application information is already available electronically via the Secretary of State's Office website – South Dakota's designated means of electronic communication. Application information is also available by mail from each of the county auditor's offices.

As was stated in (1.6), in 2008, South Dakota designed its Central Election Reporting System (CERS). The ballot creation and voter information access portions of the system will provide the critical foundation for the State's implementation of MOVE.

A key requirement of MOVE is the electronic provision of an UOCAVA voter's official absentee ballot. Currently, CERS uniquely identifies each voter within the state and has the capability of providing each specific voter with his/her own sample ballot via the Voter Information Portal (VIP) on the Secretary of State's website. This ballot has the same information as the official ballot, which could include federal to precinct level races, ballot questions and local, school and special district elections when they are combined with statewide elections. Use of the VIP feature will allow the system to provide an UOCAVA absentee ballot specific to an UOCAVA voter requesting his/her ballot electronically.

As was previously stated, the VIP aspect of CERS provides any South Dakota voter with his/her unique information, to include residence address, party of registration, precinct, polling place name and location, county auditor's contact information and the legislative district. This portal is being modified to include the absentee ballot tracking information. Where MOVE requires that an UOCAVA voter be provided with the electronic means of determining when the absentee ballot was received, the State has decided to provide this information to all South Dakota absentee voters. Through VIP absentee voters will be able to track the date their absentee ballot application was received, the date their absentee ballot was sent out and the date their absentee ballot was received. Programming changes to allow this additional information is currently underway at both

the state and county level, with several of the counties already having these changes into production. Additional programming upgrades have been made for the transmission of voter registration, history and absentee ballot tracking information to the state system for incorporation into the statewide voter registration database.

Electronic provision of the official ballot to the UOCAVA voter will be through the Secretary of State's Military and Overseas Citizens (UOCAVA) Web Portal. The process will begin when an absentee ballot application is received, and the county auditor enters the request into the county system. For those UOCAVA voters that are requesting electronic access to their ballot, after the absentee ballot application receipt date and email address is uploaded to the state voter registration system, an email to the UOCAVA voter is automatically forwarded to verify the validity of the email address. A subsequent email is forwarded to the UOCAVA voter upon the upload of the absentee ballot sent date. The ballot access email provides the necessary information for accessing the Military and Overseas Citizens (UOCAVA) Web Portal. Upon accessing the portal, the UOCAVA voter can print their official UOCAVA ballot, as well as voting and mailing instructions and the absentee voter's oath. After voting his/her ballot, the UOCAVA voter returns the ballot to the auditor of the county in which the voter is registered. Upon receipt of the absentee ballot by the county auditor, the date the ballot was received is entered into the county system, which is then uploaded to the state voter registration system. This absentee ballot receipt date is then displayed on VIP for the absentee voter to view. The UOCAVA absentee ballot is then handled according to administrative rules that are in place for absentee ballot handling.

To accommodate the MOVE requirement for electronic provision absentee ballots and voting instructions to UOCAVA voters, programming is currently underway to add the Secretary of State's Military and Overseas Citizens (UOCAVA) Web Portal to CERS. Included in the programming is the process for emailing the UOCAVA voter, administrative management reporting and statistical tracking features.

The Secretary of State's Office is currently drafting the instructions for inclusion with the UOCAVA absentee ballot and for the Secretary of State's website. In addition, the plan for provision of the absentee ballot to UOCAVA voters for secondary elections is being drafted.

Many UOCAVA voters may have already submitted an application for all elections held in 2010 and did not have the ability to submit an email address. This will require the submission of a new absentee ballot application in order for the UOCAVA voter to have electronic access to the ballot. Making South Dakota's UOCAVA voters aware of the availability of electronic access to the absentee ballot is needed. To enhance upon any media provided by the federal agencies, specific instructions to UOCAVA voters will be available on the Secretary of State's website and through press releases. In addition, the Secretary of State's Office will be working with the Department of Military and Veteran's Affairs to communicate to South Dakota military, overseas military families and overseas citizens about MOVE and electronic access to the absentee ballot.

In that South Dakota received HAVA §251(b)(2) certification in 2007, remaining Title II funds are being used to pay for the implementation of MOVE.

(13) A description of the committee which participated in the development of the State plan in accordance with section 255 and the procedures followed by the committee under such section and section 256.

The state plans of 2003 and 2004 were developed with guidance from a HAVA task force comprised of advocates for persons with disabilities and voter participation, representatives of the recognized political parties, state legislators, county auditors including the county auditors of South Dakota's two most populous counties, the State Board of Elections, the State Election Director, and the Secretary of State.

Task force members and other stake holders were notified of the 2008 proposed plan and were offered the opportunity to comment. The proposed plan was available for inspection and comment by the public for at least 30 days. The plan was posted at www.sdsos.gov and was available by request. The State also notified the public of the opportunity to comment on the proposed plan at an open hearing, which was the July 2008 meeting of the State Board of Elections. The State considered all comments submitted.

For this fifth version of South Dakota's state plan a HAVA task force has been re-established. The task force members consists of the Board of Elections members, election officials from South Dakota's two most populous counties, advocates for persons with disabilities, the Secretary of State, and the State Election Supervisor.

This proposed plan will be available for inspection and comment by the public for at least 30 days. The plan will be posted at www.sdsos.gov and be available by request. The State will also notify the public of the opportunity to comment on the proposed plan at an open hearing scheduled for May 12, 2010.

[FR Doc. 2010–16849 Filed 7–9–10; 8:45 am]
BILLING CODE 6820–KF–C

DEPARTMENT OF ENERGY

Meeting of Energy Services Companies and the Federal Energy Management Program

AGENCY: Department of Energy (DOE), Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the Federal Energy Management Program (FEMP) within the Office of Energy Efficiency and Renewable Energy on the use of high-end technologies in energy savings performance contracts.

DATES: The public meeting will be held Wednesday, July 14, 2010, 9 a.m. until 12 Noon.

ADDRESSES: U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Call-in number: 301–903–9159.

FOR FURTHER INFORMATION CONTACT: *http://www1.eere.energy.gov/femp/financing/espcs_publicforums.html*, or contact Katy Christiansen at *katherine.christiansen@hq.doe.gov,* (202) 586–7930.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to provide an opportunity for the public to present comment on the increased use of high-end technology for energy savings performance contracts. Information on the current ESPC program at DOE can be found at *http://www1.eere.energy.gov/femp/financing/espcs.html.*

Tentative Agenda: Agenda will include the following:

- Recent changes in ESPC policies.
- Using the Best Commercially Available Energy-Efficient Technology.
- Using New and Emerging Technologies To Increase Savings and Expand Projects.
- Solid State Lighting.
- Case studies of New and Emerging Technologies in ESPC.
- Roundtable Discussion: Easing Barriers to ET in ESPC.

The meeting is open to the public. DOE invites participation by all interested parties.

For information on:

- The agenda;
- Facilities or services for individuals with disabilities;
- Requests for special assistance;

Contact: http://www1.eere.energy.gov/femp/financing/espcs_publicforums.html or Katy Christiansen at *Katherine.christiansen@hq.doe.gov,* (202) 586–7930.

Minutes: DOE will designate a DOE official to preside at the public meeting. The meeting will not be a judicial or evidentiary-type public hearing. A stenographer will be present to record and transcribe the proceedings. The minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Public Participation: DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments about the proceedings. The public meeting will be conducted in an informal, conference style. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE) before discussion of a particular topic. DOE will permit other participants to comment briefly on any general statements. At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. DOE representatives may also ask questions of participants concerning other matters relevant to ESPCs and may accept additional comments or questions from those attending, as time permits.

Issued in Washington, DC on July 7, 2010.

Scott Richlen,

Acting FEMP Program Manager.

[FR Doc. 2010–16928 Filed 7–9–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13163–000]

Bishop Tungsten Development, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

July 2, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 13163–000.

c. *Date filed:* April 3, 2008.

d. *Applicant:* Bishop Tungsten Development, LLC.

e. *Name of Project:* Pine Creek Mine Water Discharge System Sites 1 and 2 Project.

f. *Location:* The proposed Pine Creek Mine Water Discharge System Sites 1 and 2 Project would be located on the mine discharge system in Inyo County, California. The land in which all the project structures are located is owned by the applicant.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Douglas A. Hicks, Bishop Tungsten Development, LLC, 9050 Pine Creek Road, Bishop, CA 93514, phone (760) 387–2080.

i. *FERC Contact:* Robert Bell, (202) 502–6062, *Robert.bell@ferc.gov*.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents:* The Commission directs, pursuant to section 4.34(b) of the Regulations (*see* Order No. 640, issued May 8, 1991, 56 FR 23,108 (May 20, 1991)) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission: 60 days from the issuance of this notice. All reply comments must be filed with the Commission: 105 days from the issuance of this notice.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed Pine Creek Mine Water Discharge System Sites 1 and 2 Project consists of: (1) An existing powerhouse at Site 2 containing one proposed generating unit with an installed capacity of 150 kilowatts, and (2) appurtenant facilities. Bishop Tungsten Development

estimates the project would have an average annual generation of 1.2 gigawatt-hours that would be sold to a local utility. Although Site 1 also contains an existing powerhouse, Bishop Tungsten is not proposing to generate any power from this location.

m. This filing is available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filing may also be viewed on the Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, here P–12624, in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for review and reproduction at the address in item h. above.

n. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit a competing development application. A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) Bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "COMMENTS", "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16838 Filed 7–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2277–023]

AmerenUE; Notice of Authorization for Continued Project Operation

July 2, 2010.

On June 24, 2008, AmerenUE, licensee for the Taum Sauk Pumped Storage Hydroelectric Project, filed an Application for a New License pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. The Taum Sauk Pumped Storage Hydroelectric Project is on the East Fork Black River and Taum Sauk Creek, in Reynolds, Iron, St. Francois, and Washington counties, near the Town of Lesterville, Missouri.

The license for Project No. 2277 was issued for a period ending June 30, 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. 2277 is issued to AmerenUE for a period effective July 1, 2010 through June 30, 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 June 30, 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 AmerenUE is authorized to continue operation of the Taum Sauk Pumped Storage Hydroelectric Project, until such time as the Commission acts on its application for a subsequent license.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16837 Filed 7–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–44–000; Docket No. PR10–46–000; Docket No. PR10–48–000; Docket No. PR10–49–000; Docket No. PR10–50–000]

Houston Pipe Line Company LP, Worsham-Steed Gas Storage, L.P., Energy Transfer Fuel, LP, Mid Continent Market Center, L.L.C., Oasis Pipeline, LP (Not Consolidated); Notice of Baseline Filings

July 2, 2010.

Take notice that on June 29, 2010 and June 30, 2010, respectively the applicants listed above submitted their 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, July 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16840 Filed 7–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12574–002]

Santiam Water Control District; Notice of Application Ready for Environmental Analysis, and Soliciting Comments, Terms, Conditions, and Recommendations

July 2, 2010.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 12574–002.

c. *Date Filed:* June 18, 2007 and supplemented on July 18, 2007, pursuant to Order Denying Rehearing (119 FERC ¶ 61,159).

d. *Applicant:* Santiam Water Control District.

e. *Name of Project:* Stayton Hydroelectric Project.

f. *Location:* On the Stayton Ditch near the Town of Stayton, Marion County, Oregon. The project would not occupy United States land.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705 and 2708.

h. *Applicant Contact:* Brent Stevenson, Santiam Water Control District, 284 East Water Street, Stayton, OR 97383, (503) 769–2669.

i. *FERC Contact:* Joseph Hassell, (202) 502–8079.

j. Deadline for filing comments, recommendations, terms and conditions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "eFiling" link.

k. This application has been accepted and is now ready for environmental analysis at this time.

l. *Description of Project:* The Stayton Hydropower Project would consist of the existing: (1) Power canal headgate structure and fish ladder, fish screen, and 28-inch-diameter, 600-foot-long juvenile fish bypassed return pipe located near the upstream end of Stayton Ditch; (2) the 0.5-mile-long Stayton Ditch; (3) 24-foot-long by 12-foot-high intake structure equipped with 24.6-foot-long by 12-foot-high and 3-inch bar spacing trashracks located just upstream of the powerhouse; (4) the 40-foot-long V-type spillway weir and integral powerhouse containing a single 600-kilowatt generating unit; (5) the 24-foot-long by 12-foot-high outlet structure located just downstream of the powerhouse; (6) the 0.5-mile-long tailrace channel and tailrace fish barrier; (7) the 100-foot-long, 2,400-kilovolt transmission line; and (8) appurtenant facilities. The project would have an average annual generation of 4,320 megawatt-hours.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

All filings must: (1) Bear in all capital letters the title "COMMENTS," "REPLY COMMENTS,"
"RECOMMENDATIONS," or "TERMS AND CONDITIONS," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone

number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:* The Commission staff proposes to issue a single Environmental Assessment (EA) rather than issuing a draft and final EA. Staff intends to allow 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the exemption application. The application will be processed according to the schedule, but revisions to the schedule may be made as appropriate:

Milestone	Target date
Notice of Acceptance and Ready for Environmental Analysis	June 18, 2010.
Filing comments, recommendations, terms and conditions	August 17, 2010.
Reply comments	October 1, 2010.
Notice of availability of Final EA	December 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16839 Filed 7–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–47–000]

Michigan Consolidated Gas; Notice of Rate Election

July 2, 2010.

Take notice that on June 28, 2010, Michigan Consolidated Gas (MichCon) filed a Rate Election pursuant to section 284.123(b)(1)(ii) of the Commission's regulations. MichCon proposes to utilize its presently effective Michigan Public Service Commission transportation rates for transportation service provided under MichCon's Order No. 63 blanket certificate.

Any person desiring to participate in this rate 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, July 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16835 Filed 7–9–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–463–000]

Tennessee Pipeline Company; Notice of Request Under Blanket Authorization

July 1, 2010.

Take notice that on June 18, 2010, Tennessee Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP10–463–000, a prior notice request pursuant to sections 157.205 and 157.216 of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act for authorization to abandon an inactive supply lateral designated as Line No. 523A–100, located in Lafourche Parish, Louisiana extending into state waters offshore Louisiana in the Bay Marchand Area, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Tennessee proposes to abandon an inactive offshore supply lateral consisting of approximately 11.4 miles of six-inch diameter and associated meters and appurtenances. Tennessee states that a segment of the supply lateral was damaged by Hurricane Ike in September 2008 and the supply lateral has been out of service since this time. Tennessee avers that the proposed abandonment will not result in the termination of any services to Tennessee customers and the receipt point and delivery point proposed for abandonment are not tied to any firm transportation agreement. Tennessee declares that no interruptible services have been provided through the supply lateral in more than twelve months.

Any questions regarding the application should be directed to Susan T. Halbach, Senior Counsel, Tennessee Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002 at (713) 420–5751 or (713) 420–1601 (facsimile)

or Debbie Kalisek, Analyst, Certificates & Regulatory Compliance, at (713) 420–3292 or (713) 420–1605 (facsimile).

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–16836 Filed 7–9–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2009–0400; FRL–9174–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Boat Manufacturing (40 CFR Part 63, Subpart VVVV) (Renewal), EPA ICR Number 1966.04, OMB Control Number 2060–0546

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before August 11, 2010.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2009–0400 to (1) EPA online using *http://www.regulations.gov* (our preferred method), or by e-mail to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 8, 2009 (74 *FR* 32581), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2009–0400, which is available for public viewing online at *http://www.regulations.gov,* in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: NESHAP for Boat Production (Renewal).

ICR Numbers: EPA ICR Number 1966.04, OMB Control Number 2060–0546.

ICR Status: This ICR is schedule to expire on September 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Boat Manufacturing (40 CFR part 63, subpart VVVV) were proposed on July 14, 2000, and promulgated on August 22, 2001.

This regulation covers resin and gel coat operations at fiberglass boat manufacturers, paint and coating operations at aluminum boat manufacturers, and carpet and fabric adhesive operations at all boat manufacturers. Owners or operators of boat manufacturing facilities are required to submit initial notification, performance tests, and periodic reports. Respondents are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Semiannual reports are also required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NESHAP.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least five years following the date of such measurements,

maintain reports and records. Performance tests reports are required as this is the Agency's record of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance were achieved.

All reports are sent to the delegated state or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA regional office. This information is being collected to assure compliance with 40 CFR part 63, subpart VVVV as authorized in section 112 and 114(a) of the Clean Air Act. The required information consists of emissions date and other information that have been determined to be private.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 81 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining, information, and disclosing and providing information. All existing ways will have to adjust to comply with any previously applicable instructions and requirements that have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Boat manufacturing.

Estimated Number of Respondents: 144.

Frequency of Response: Initially, quarterly, and semiannually.

Estimated Total Annual Hour Burden: 23,543.

Estimated Total Annual Cost: $2,227,693 which includes $2,226,893 in labor costs, no capital/startup costs, and $800 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is a decrease of 2,784 hours in this ICR as compared to the previous one. There is a difference of 159 responses as compared to the previous ICR of 448. This shift is attributed to the fact that initial notification for existing sources has already been achieved.

Dated: July 6, 2010.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2010–16907 Filed 7–9–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0126; FRL–9174–2]

Clean Water Act Section 312(b): Notice Seeking Stakeholder Input on Petition and Other Request To Revise the Performance Standards for Marine Sanitation Devices

AGENCY: Environmental Protection Agency.

ACTION: Notice of petition and other request for rulemaking; request for comments.

SUMMARY: This action notifies the public that the Environmental Protection Agency (EPA or "the Agency") has received a petition for rulemaking from Friends of the Earth (FOE) and another separate request for rulemaking under section 312 of the Clean Water Act (CWA). In general these rulemaking-related requests ask EPA to revise its regulations establishing performance standards for vessel sewage treatment devices under the CWA. The rulemaking petition from FOE also requests that EPA establish monitoring, recordkeeping and reporting requirements under the CWA to ensure compliance with the performance standards. EPA has not made a decision on whether to grant or deny the rulemaking requests, nor is the Agency proposing any changes to the performance standards or other provisions of its regulations at this time. Rather, the purpose of today's Notice is simply to make the public aware of the issues raised in the requests for rulemaking and to obtain the public's input, in the form of comment and relevant information, to help EPA determine appropriate action in response to each of these requests. In particular, EPA seeks input regarding: The universe of vessels operating on navigable waters that use sewage treatment devices; technical information on the performance, effectiveness and costs of vessel sewage treatment devices, including performance testing data; suggestions on what, if any, changes to the performance standards might be appropriate; and information on monitoring, recordkeeping and reporting approaches for vessel sewage discharges.

DATES: Comments must be received on or before November 9, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2010–0126, by one of the following methods:

1. *http://www.regulations.gov:* Follow the online instructions for submitting comments.

2. *E-mail: ow-docket@epa.gov,* Attention Docket ID No. EPA–HQ–OW–2010–0126,

3. *U.S. Mail:* Water Docket, U.S. Environmental Protection Agency, Mailcode: 2822–1T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Docket ID No. EPA–HQ–OW–2010–0126. Please include a total of two copies in addition to the original.

4. *Hand Delivery or Courier Service:* Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004, Attention: Docket ID No. EPA–HQ–OW–2010–0126. 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 Docket ID No. EPA–HQ–OW–2010–0126. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA

Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Unit I.B and Unit VI of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Water Docket. The Office of Water (OW) Water Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Water Docket telephone number is (202) 566–2426, and the Docket's address is Water Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. 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.

FOR FURTHER INFORMATION CONTACT: Kathryn Benz, U.S. Environmental Protection Agency Headquarters, Office of Water, Office of Wetlands, Oceans, and Watersheds, Mailcode: 4504T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–1223; e-mail: *msdstandards-hq@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Today's Notice does not contain, modify or establish any regulatory requirements, nor does it discuss any specific regulatory options. This Notice simply: (1) Notifies the public that EPA has received a petition for rulemaking and another separate request for rulemaking (collectively, "rulemaking requests") asking the Agency to revise the performance standards for marine sanitation devices (MSDs) (devices that treat vessel sewage) under section 312(b)(1) of the CWA and provides a summary of those requests, and (2) seeks comment, technical input, and factual information on issues associated with the requests.

Today's Notice will be of interest to the general public, State agencies, other Federal agencies, manufacturers of MSDs, independent laboratories, and owners or operators of commercial and recreational vessels with toilets installed onboard that operate on U.S. navigable waters. This listing is not intended to be exhaustive, but rather provides a guide for readers to identify which entities might be interested in this Notice. Other types of entities not listed here might also be interested in this Notice.

B. What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI)

Do not submit CBI to EPA through *http://www.regulations.gov* or e-mail. For CBI information on 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. Additional information on submitting CBI for purposes of this Notice is included in Unit VI of the **SUPPLEMENTARY INFORMATION** section of this document.

2. Tips for Preparing Your Comments

When submitting comments, please:

- Identify this Notice by docket number and other identifying information (subject heading, **Federal Register** date, and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives; and provide reasons for your suggested alternatives.
- 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.
- Make sure to submit your comments and any supporting information/data by the comment period deadline identified in this Notice.

C. How can I get copies of this document and other related information?

1. *Docket.* EPA has established an official public docket for this Notice under Docket ID. No. EPA–HQ–OW–2010–0126. The official public docket consists of the documents specifically referenced in this Notice, any public comments received, and other information related to this Notice. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–2426. A reasonable fee will be charged for copies.

2. *Electronic Access.* An electronic version of the public docket, including this **Federal Register** document, is available through EPA's electronic public docket and comment system. You may access the public docket at *http://www.regulations.gov* to view public comments, to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Although not all docket materials may be available electronically, you may still access any of the publically available docket materials through the Docket Facility identified in Unit I.C(1).

II. Regulation of Sewage Discharges From Vessels Under the Clean Water Act

A. Relationship Between Clean Water Act Sections 312 and 402

The Clean Water Act (CWA) is the centerpiece of Federal legislation addressing the discharge of pollutants into waters of the United States. Section 301(a) of the CWA provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharge is in compliance with certain other sections of the Act. 33 U.S.C. 1311(a). The CWA defines "discharge of a pollutant" as "(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating

craft." 33 U.S.C. 1362(12). A "point source" is a "discernible, confined and discrete conveyance" and includes a "vessel or other floating craft." 33 U.S.C. 1362(14). One way a person may discharge a pollutant without violating the section 301 prohibition is to obtain a National Pollutant Discharge Elimination System (NPDES) permit under section 402. 33 U.S.C. 1342.

While EPA has issued an NPDES Vessel General Permit (VGP) for discharges incidental to the normal operation of certain vessels, vessel sewage discharges within the meaning of CWA section 312 are not subject to NPDES permitting and are thus excluded from coverage under the VGP. This is because, while sewage is defined as a "pollutant" under the CWA, *sewage from vessels* within the meaning of section 312, which includes graywater in the case of commercial vessels operating on the Great Lakes, is exempt from this statutory definition. 33 U.S.C. 1322(a)(6); 33 U.S.C. 1362(6). As a result, vessel owners/operators are not required to obtain NPDES permits before discharging this waste.[1] Rather, Congress enacted a separate non-permitting scheme—CWA section 312—to regulate the discharge of sewage from vessels.

B. CWA Section 312

CWA sections 312(a)–(m) provide the framework under which EPA and the U.S. Coast Guard regulate sewage discharges from vessels. Section 312(h) prohibits vessels equipped with installed toilet facilities from operating on the navigable waters (which include the three mile territorial seas), unless the vessel is equipped with an operable MSD certified by the Coast Guard to meet applicable performance standards. 33 U.S.C. 1322(h). The CWA defines a "marine sanitation device" as "any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage." 33 U.S.C. 1322(a)(5). "Sewage" is "human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes" and includes graywater discharges from commercial vessels (as defined at 33 U.S.C. 1322(a)(10)) operating on the Great Lakes. 33 U.S.C. 1322(a)(6). Discharges of graywater from non-commercial vessels on the Great Lakes, and from all vessels operating outside of the Great Lakes, are *not* regulated under CWA section 312.

The provisions of section 312 are implemented jointly by EPA and the Coast Guard. EPA sets performance standards for MSDs and is involved in the establishment of no discharge zones (NDZs) for vessel sewage. 33 U.S.C. 1322(b) and (f). The Coast Guard is responsible for developing regulations governing the design, construction, certification, installation and operation of MSDs, consistent with EPA's standards. 33 U.S.C. 1322(b) and (g).

Unlike the section 402 NPDES program, States have a limited role in implementing the section 312 vessel sewage program. Except in the case of houseboats (as defined at CWA section 312(f)(1)(B)), States may not adopt or enforce any statute or regulation of the State or a political subdivision with respect to the design, manufacture, installation, or use of any MSDs. States may, in certain circumstances, request that EPA establish NDZs for vessel sewage or, after required findings are made by EPA, establish such zones themselves. *See generally* 33 U.S.C. 1322(f); *see also* Unit II.A.3 of the **SUPPLEMENTARY INFORMATION** section of this document.

The CWA also vests the Coast Guard and States with authority to enforce the provisions of section 312 and its implementing regulations. 33 U.S.C. 1322(k). Persons who tamper with an installed certified MSD, or who operate vessels subject to section 312 without operable MSDs, are subject to civil penalties of up to $5,000 and $2,000, respectively, for each violation; manufacturers who sell a non-certified MSD, or who sell a vessel subject to section 312 that is not equipped with a certified MSD, are subject to civil penalties of up to $5,000 for each violation. *See* 33 U.S.C. 1322(j).

1. No Discharge Zones

Section 312 authorizes the establishment of NDZs, areas in which both treated and untreated sewage discharges from vessels are prohibited. *See* 33 U.S.C. 1322(f). States may establish an NDZ for some or all of their waters if EPA determines that "adequate facilities for the safe and sanitary removal and treatment of the sewage from all vessels are reasonably available." 33 U.S.C. 1322(f)(3). States may also request that EPA establish NDZs by rulemaking (1) if EPA determines that the protection and enhancement of the quality of the waters warrants such a prohibition, or (2) to prohibit the discharge of vessel sewage into a drinking water intake zone. 33 U.S.C. 1322(f)(4)(A)–(B). Additional information on NDZs can be found by visiting the following EPA Web site: *http://www.epa.gov/owow/oceans/regulatory/vessel_sewage/vsdnozone.html.*

2. EPA Performance Standards (40 CFR Part 140)

Section 312(b)(1) of the CWA provides that "after giving appropriate consideration to the economic costs involved, and within the limits of available technology, [EPA] shall promulgate Federal standards of performance for marine sanitation devices * * * which shall be designed to prevent the discharge of untreated or inadequately treated sewage into or upon the navigable waters * * *". 33 U.S.C. 1322(b)(1). Further, the standards must be consistent with maritime safety and marine and navigation laws and regulations. *Id.* Following this mandate, EPA finalized the performance standards for MSDs on January 29, 1976. The regulations promulgated at 40 CFR 140.3 distinguish between (1) MSDs discharging in freshwaters whose inlets or outlets prevent ingress or egress by vessel traffic subject to the regulations, or in rivers that are not capable of navigation by interstate vessel traffic subject to the regulations, and (2) MSDs discharging in all other water bodies.

In freshwaters not subject to ingress or egress by vessel traffic or in rivers that are not capable of interstate vessel traffic, no discharge of sewage is allowed. To meet this requirement, all vessels with installed toilets operating in these water bodies must be equipped with a device that prevents the discharge of treated or untreated sewage (*i.e.,* a holding tank), or the operator must secure the treatment device so as to prevent the discharge of sewage. *See* 40 CFR 140.3(a)(1).

EPA set separate performance standards for MSDs discharging in all other water bodies. On or before January 30, 1980, if the MSD had a discharge, it was required to produce an effluent with no visible floating solids and a fecal coliform bacterial count not greater than 1,000 per 100 milliliters (mL). *See* 40 CFR 140.3(a)(2). After January 30, 1980, EPA generally required MSDs which have a discharge to produce an effluent with a fecal coliform bacterial count not greater than 200 per 100 mL, and no more than 150 milligrams (mg) total suspended solids per liter. *See* 40 CFR 140.3(d). *See also* 40 CFR 140.3(b) (describing applicability of performance

[1] *Note,* however, that commercial vessels greater than 79 feet in length which are not operating on the Great Lakes need to obtain coverage under EPA's recently issued VGP if the vessel discharges graywater combined with sewage in one effluent stream. Under the VGP, discharges of graywater that contain sewage are eligible for coverage under the permit (except for those discharges from commercial vessels in the Great Lakes) and must meet the discharge limitation requirements in Parts 2 and 5 (if applicable), as well as any applicable CWA section 312 requirements for sewage.

standards to vessels owned and operated by the U.S. Department of Defense), and 40 CFR.140.3(e) and (f) (describing applicability of performance standards to certain vessels).

3. Coast Guard's Regulation of MSDs (33 CFR Part 159)

Under the CWA, the Coast Guard is responsible for promulgating regulations governing the design, construction, installation, and operation of MSDs based on EPA's performance standards. 33 U.S.C. 1322(b) and (g). This responsibility includes certification of MSDs. There are currently three types of MSDs: [2]

- Type I MSDs are flow-through treatment devices that commonly use maceration and disinfection for the treatment of sewage. Type I devices may be installed only on vessels less than or equal to 65 feet in length. The performance standard applied to Type I MSDs is to produce an effluent with no visible floating solids and a fecal coliform bacterial count not greater than 1,000 per 100 mL.
- Type II MSDs are also flow-through treatment devices, which may employ biological treatment and disinfection, although some Type II MSDs use maceration and disinfection. Type II MSDs may be installed on vessels of any length. The performance standard applied to Type II MSDs is to produce an effluent with a fecal coliform bacterial count not greater than 200 per 100 mL, and no more than 150 mg total suspended solids per liter.
- Type III MSDs are holding tanks, where sewage is stored until it can be disposed of shore-side or at sea (beyond three miles from shore). Type III MSDs may be installed on vessels of any length.

The Coast Guard may certify a product line of MSDs for vessel installation and use if the production-quality model MSD complies with Coast Guard's design and testing criteria (33 CFR part 159), as confirmed by testing conducted at a Coast Guard-accepted independent laboratory. After Coast Guard review and certification, each MSD model is designated a certification number and issued a Certificate of Approval, typically valid for five years. MSDs manufactured during the certification period are deemed to have met the relevant performance standards and certification requirements and may be installed on vessels. During vessel inspections, the Coast Guard may examine an MSD to ensure that it is operable. 33 U.S.C. 1322(h)(4).

The Coast Guard's regulations at 33 CFR part 159 apply to MSDs offered for sale or resale, or imported into the United States for sale or resale, and to vessels that have toilets and MSDs installed onboard and operate in the navigable waters. In addition to CWA section 312, and as further described in Unit V in the **SUPPLEMENTARY INFORMATION** section of this document, sewage discharges from certain vessels may also be subject to regulation under other statutes or international treaties including the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2001, also known as "Title XIV" (applies to certain cruise ships operating in Alaska), and/or Annex IV to the "International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto" ("MARPOL") (applies if the vessel's flag State is a party to Annex IV).

III. Summary of Rulemaking Requests

EPA received the following petition for rulemaking and other separate request for rulemaking asking the Agency to revise its regulations establishing performance standards under section 312(b) of the CWA:

A. Friends of the Earth Petition

On April 28, 2009, pursuant to the Administrative Procedure Act, Friends of the Earth (FOE) petitioned EPA to initiate rulemaking to revise the regulations containing the CWA section 312(b) performance standards for Type II MSDs. FOE also requests that EPA establish "strong" monitoring, recordkeeping and reporting requirements pursuant to CWA section 312 to ensure compliance with the performance standards.

B. Other Request for Rulemaking

EPA received separate letters forwarded by Representative C.W. Bill Young (Florida, 10th District) and Senator Bill Nelson (Florida), dated December 10, 2008, and April 9, 2009, respectively, on behalf of their constituent, Charles B. Husick. In general, Mr. Husick requests that EPA: (1) Establish new performance standards for Type I MSDs (installed on vessels less than or equal to 65 feet in length); and (2) revise the existing regulations at 40 CFR Part 140 to allow certain vessels equipped with MSDs that meet the revised performance standards to discharge in tidal waters, including areas designated as NDZs, except those water bodies where it could be demonstrated that discharges of effluent meeting the proposed performance standards would cause "measurable harm to the aquatic environment."

C. Documents Cited in Rulemaking Requests

Both FOE and Mr. Husick assert that the CWA section 312(b) performance standards are outdated, and that available technology can meet more stringent standards than the current requirements for MSDs. To support these contentions, Mr. Husick cites a draft report (now final) detailing performance evaluation tests performed by EPA on two Type I MSD models (EPA final report, "Performance Evaluation of Type I Marine Sanitation Devices" (2010), available at: *http://www.epa.gov/ORD/NRMRL/pubs/600r10008/600r10008.pdf;* also available in the docket for this Notice), and FOE primarily cites data contained in EPA's "Cruise Ship Discharge Assessment Report" (2008) that assessed waste streams from cruise ships operating in Alaska, and analyzed the environmental management, including treatment, of those waste streams (available at: *http://www.epa.gov/owow/oceans/cruise_ships/cruise_ship_disch_assess_report.html;* also available in the docket for this Notice).

D. Status of the Rulemaking Requests

On May 14, 2009, EPA sent a response to FOE acknowledging receipt of the petition. EPA also provided responses to Representative Young and Mr. Husick on March 12, 2009, and June 10, 2009, respectively. In the letters to Mr. Husick and Representative Young, EPA noted that the Agency would consider Mr. Husick's opinions and requests about performance standards for Type I MSDs. In response to Mr. Husick's request that EPA revise the regulations at 40 CFR part 140 to allow certain vessels equipped with devices that meet revised performance standards to discharge in tidal waters, including areas designated as NDZs, EPA's letter noted that the CWA does not currently provide EPA with the authority to allow this request with respect to NDZs. In particular, EPA's letter noted that CWA section 312(f)(3) provides that a "State may completely prohibit the discharge from all vessels of any sewage, whether treated or not * * *". FOE's petition, the letters forwarded by Representative Young and Senator Nelson to the

[2] Section 312 allows the Coast Guard, after consultation with EPA, to "distinguish among classes, type, and sizes of vessels as well as between new and existing vessels, and may waive applicability of standards and regulations as necessary or appropriate for such classes, types and sizes of vessels." 33 U.S.C. 1322(c)(2). Pursuant to this authority, the Coast Guard established three different categories of MSDs with different applications of EPA's performance standards. *See generally* 33 CFR 159.53.

Agency on behalf of Mr. Husick, and EPA's initial responses to these requests are available in the docket for this Notice.

IV. Request for Public Input and Comment

There are a number of complex issues that EPA, in consultation with the Coast Guard, would need to consider should EPA decide to initiate rulemaking. These issues include, for example, how to minimize, as appropriate, any potential inconsistencies between domestic or international laws that regulate discharges of vessel sewage and any revisions to the CWA section 312 program. Based on these complexities, EPA is seeking public input as it determines how best to respond to the rulemaking requests.

We welcome public input on all technical and programmatic issues that the public believes warrant our consideration in determining how to respond to the rulemaking requests, and what, if any, changes to the performance standards for MSDs are appropriate. In particular, we are interested in obtaining information and data on vessel sewage treatment devices that have undergone rigorous, verifiable and repeatable testing or evaluation. Furthermore, we are interested in any analytical data obtained from treated sewage samples taken at the point of discharge from treatment devices installed onboard vessels. The Agency is already coordinating with the Coast Guard to collect such existing information. Today's Notice is intended to ensure we obtain early public input and all relevant and currently available information to inform any future Agency decisions.

As previously noted, in addition to regulation under CWA section 312, sewage discharges from certain vessels may also be subject to regulation under a variety of other statutes or international treaties, including Title XIV and/or MARPOL Annex IV. It is important to consider these regimes when providing data and responding to the categories and questions posed below. For additional information on Title XIV and MARPOL Annex IV, please refer to Unit V in the **SUPPLEMENTARY INFORMATION** section of this document.

While we welcome information and comments on all issues related to the rulemaking requests and potential revisions to the performance standards for MSDs, we especially would appreciate input, in the form of public comment, relevant information or data, on topics outlined in the following categories:

CATEGORY 1—What existing public or private data sources are available for use in identifying, categorizing, and describing:

A. *The numbers, types, and service of foreign-flagged and domestic vessels currently operating in U.S. navigable waters that have toilets installed onboard?*

B. *Of the domestic-flagged vessels described in response to inquiry (1.A) above, how many have one (or more) of the following sewage treatment devices installed onboard:*

- Type I MSD?
- Type II MSD?
- Type III MSD?

C. *Of the foreign-flagged vessels described in response to inquiry (1.A) above, how many have one (or more) of the following sewage treatment devices installed onboard:*[3]

- Type II MSD (*or*) Sewage Comminuting and Disinfecting System?
- Type III MSD (*or*) Sewage Holding Tank?
- Sewage Treatment Plant (STP)?

D. *Of those foreign-flagged vessels with STPs described in response to inquiry (1.C) above, how many have devices that are:*

- *Certified to meet the MARPOL Annex IV effluent standards and performance tests adopted in Resolution MEPC.2(VI)?*
- *Certified to meet the MARPOL Annex IV effluent standards and performance tests adopted in Resolution MEPC.159(55)?*

Desirable input under this category would include either citations to databases or documents where such information is available, or the submission of actual information on vessel numbers and categories with citations to the source data. If submitting actual information or data on vessel numbers or categories, please also include information that describes the vessels. Examples of useful information include: Whether the vessel is domestic or foreign-flagged; whether the vessel is used in recreational, public or commercial service; if the vessel is used in commercial service, the nature of the service; the size (*i.e.,* length and tonnage) of the vessel, the number of persons the vessel is certified to carry, and the rated capacity of the vessel's sewage treatment device. This information would be useful to the Agency in identifying and categorizing the universe of vessels affected by any potential revisions to the performance standards. Information or suggestions on how to obtain this information for foreign-flagged vessels would be especially useful.

CATEGORY 2—What existing product information or performance data is available for:

A. *MSDs certified to meet the performance standards and testing requirements described at 33 CFR Part 159? (***Please Note:** *EPA is seeking input on information that is not currently contained in the Coast Guard's certification files.)*

B. *STPs that have been tested and received Certificates of Type Approval certifying that the device meets the MARPOL Annex IV effluent standards and performance tests in either Resolution MEPC.2(VI) or Resolution MEPC.159(55)*?

Citations to databases or documents where available, or the submission of actual product information, product literature (*e.g.,* operating manual or guidance), and performance data for the device, together with supporting citations to the underlying data, would be helpful. Table 1 lists specific information of interest.

[3] The CWA defines a "marine sanitation device" as "any equipment for installation on board a vessel which is designed to receive, retain, treat, or discharge sewage, and any process to treat such sewage." 33 U.S.C. 1322(a)(5). Under this definition, Sewage Treatment Plants, Sewage Comminuting and Disinfecting Systems, or Sewage Holding Tanks are all types of MSDs. However, these terms have distinct applications under the CWA and MARPOL Annex IV regimes. Therefore, vessel sewage treatment devices are referred to as MSDs for purposes of the CWA, and in the context of MARPOL Annex IV, vessel sewage treatment devices are referred to as Sewage Treatment Plants, Sewage Comminuting and Disinfecting Systems or Sewage Holding Tanks.

TABLE 1

General product information	Performance data (Please note: EPA is interested in analytical data in their entirety, if possible)
• Manufacturer name and contact information (address, phone/fax number, e-mail address, Web site address). • Model name/number. • Type I, II or III (MSD only). • Date when Certificate of Type Approval was issued (and copy of Certificate, if available). • Certifying country/body. • Rated capacity. • Pretreatment method (if any). • Treatment method (if any). • Disinfection method (if any). • System designed to treat graywater only, sewage only, or combined graywater and sewage; source of graywater (if applicable). • Vacuum or gravity feed. • Flushwater: Fresh, salt, or both. • Ability for the system to treat nutrients (*e.g.,* nitrogen, phosphorous, etc.) (if any) or other pollutants for which limits do not exist under the existing CWA 312 standards.	• Certification testing date(s). • Testing location: laboratory or on vessel. • Testing methodology/testing protocol used, including the analyte test methods used (*e.g.,* a given EPA or ISO test method). • Information regarding the volume of process water added per unit volume of raw influent. • Influent and effluent total suspended solids (TSS) concentrations. • Influent and effluent thermotolerant coliform concentrations. • Influent and effluent e. coli concentrations. • Influent and effluent enterococci concentrations. • Influent and effluent biological oxygen demand over five days (BOD_5). • Influent and effluent chemical oxygen demand (COD). • Where available, influent and effluent nutrient concentrations (*e.g.,* total phosphorus, orthophosphate, total nitrogen, total Kjeldahl nitrogen, ammonia nitrogen, Nitrate+Nitrite). • Effluent pH. • Effluent total residual chlorine/total residual oxidant. • Number of samples collected in any given test run or sampling period. • Number of zero or non-detected values (include MDL and MRL) in any given test run or sampling period. • Laboratory name and contact information (address, phone/fax number, e-mail address). • Data on potential differences in the equipment's ability to treat a combined graywater and sewage influent versus a sewage-only influent (if applicable).

EPA is also interested in any information about the installation requirements, limitations, and costs associated with the sewage treatment devices. Examples of useful information include:

• The costs of the devices (including initial capital costs, installation costs, and operation and maintenance costs), the extent to which these costs vary based on the type or class of vessel, and the number of vessels on which the device has been installed.

• The difficulty or ease of installing these devices on either new or existing vessels (including whether installation requires dry docking, and if so, for how long, and how much space is required onboard a vessel for these devices to operate).

• Any limitations on the use of a device with regard to vessel length, tonnage, type of service, treatment volume or flow rates, power requirements, influent salinity, crew training needs or safety concerns, and the expected lifespan of the device once installed.

This information would be useful to the Agency in determining whether there are available vessel sewage treatment devices that can achieve more stringent standards than the existing CWA section 312(b) performance standards, and what limitations in technology might exist. This information would also be useful to the Agency should it decide to consider the need for regulation of other pollutants (*e.g.,* nutrients, metals) contained in vessel sewage waste streams, and the degree to which available devices are able to treat these additional pollutants.

Please note that for category 2, EPA is most interested in data, information or public comment on devices that have received certification from a competent authority (*e.g.,* either a Certificate of Approval issued by the Coast Guard or a Certificate of Type Approval issued by a certifying body pursuant to MARPOL Annex IV), or have undergone equally rigorous independent testing or evaluation.

CATEGORY 3—Are you aware of any existing information about other countries' domestic laws that establish standards or discharge limitations for vessel sewage?

Citations to the relevant laws or submission of the actual text describing the standards or discharge limitations would be useful. Other examples of helpful information under this category include: Descriptions of the types of vessels (*e.g.,* commercial, recreational and/or public vessels) and the discharges covered by the domestic regulatory regime; the geographic scope of such regimes; the specific nature of the regulatory standards or limitations; and the technical basis for such standards or limitations. This information would be useful as the Agency considers whether, and, if so, how to revise the MSD performance standards and what technical and/or operational limitations might exist based on other countries' efforts to regulate vessel sewage discharges. Please note that for this inquiry EPA is primarily interested in other countries' *domestic* standards or discharge limitations for vessels operating in their waters or flying their flag, and that we already have information on relevant international treaty requirements (*e.g.,* the MARPOL Annex IV effluent standards; *see* Unit V of the **SUPPLEMENTARY INFORMATION** section of this document for a summary description of MARPOL Annex IV).

CATEGORY 4—Given existing international and Federal limitations and controls regulating discharges of sewage from vessels, and in light of the numerous CWA section 312 State-established NDZs, should EPA consider revisions to the performance standards for MSDs, and what should be the basis for such a decision?

Readers are again invited to refer to illustrative examples of relevant statutes and treaties that are briefly summarized in Unit V of the **SUPPLEMENTARY INFORMATION** section of this document. Helpful comments under this category would address what revisions to the

performance standards might be necessary and for which type(s) of MSD (*e.g.,* Type I versus Type II, or both), and what are the impacts, both positive and negative, of revising the current CWA section 312 performance standards. This information would be useful to the Agency as it considers relative priorities for possible rulemaking, and in the event that EPA grants either rulemaking request, this information would also be helpful as the Agency determines how to best minimize inconsistencies with other applicable regulatory regimes.

CATEGORY 5—What existing information is available on the current practices, protocols or regulatory approaches to testing, monitoring and/or reporting sewage discharges from vessels, and what, if any, are the practical limitations or burdens associated with these practices?

Desirable input under this category would include information on if and how *sewage effluent* is currently monitored or tested and how data are reported to regulatory bodies, either voluntarily or to meet regulatory requirements. Desirable information also includes the specific parameters monitored or tested, costs associated with the testing, monitoring and recordkeeping practices, the cost of any vessel retrofitting to allow for the testing and monitoring, the frequency of testing and/or monitoring, and information on the use/availability of sewage alarm monitors. Helpful information also includes what other measures are being used to verify performance and to assess whether the sewage treatment device is properly operating or functioning once installed onboard. This information would be useful to the Agency as it determines how it might respond to FOE's request for a monitoring and recordkeeping program under CWA section 312.

V. Selected Examples of Other Regulatory Schemes Addressing Sewage Discharges From Vessels

A. The International Convention for the Prevention of Pollution From Ships

Because of the international nature of maritime commerce, many of the customs, practices, rules, and regulations associated with vessel operations are addressed through international agreements and conventions. A majority of ocean-going vessels operating in U.S. waters are registered in foreign countries and subject to the "International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto" ("MARPOL").

The Annexes to MARPOL address a range of operational discharges from vessels. The United States is a party to Annexes I (Oil), II (Noxious Liquid Substances), III (Harmful Substances in Packaged Form), V (Garbage), and VI (Air Emissions), but not Annex IV (Sewage). Thus, the United States is not bound by the provisions of Annex IV. However, in addition to being subject to the vessel sewage provisions of CWA section 312 while in the U.S. three mile territorial sea or inland waters, vessels flying the flag of countries that are parties to MARPOL Annex IV remain subject to the Annex's requirements no matter where these vessels sail. Maritime authorities of Annex IV parties (the "flag State" or "Administration") are responsible for ensuring that the vessels registered under their flag are in compliance with applicable Annexes and the corresponding guidelines and regulations.

1. MARPOL Annex IV

The principal international instrument regulating discharges of sewage from vessels is Annex IV to MARPOL. Annex IV initially entered into force in September 2003, was thereafter revised, and the revisions entered into force internationally in August 2005. *See* resolution MEPC.115(51); available in the docket for this Notice. Annex IV applies to subject vessels engaged in international voyages of 400 gross tonnage and above, and to subject vessels of less than 400 gross tonnage which are certified to carry more than 15 persons (passengers and crew). Annex IV is effectuated by regulations (binding on signatories to the Annex) and associated guidelines that contain, among other requirements, limits on the discharge of sewage into the sea, a provision for reception facilities at ports and terminals to receive sewage, and requirements for the survey and certification of a vessel's sewage treatment device. Vessels that comply with Annex IV requirements are issued an International Sewage Pollution Prevention Certificate (ISPPC) by their Administration or Recognized Organization (RO).

Vessels subject to Annex IV are required to undergo periodic surveys to ensure compliance with the Annex IV requirements; surveys are to be conducted every five years by the Administration or RO. Among other things, a vessel undergoing a survey must demonstrate that it is equipped with either (1) An STP type-approved by the Administration, taking into account the operational requirements based on standards and test methods developed by the International Maritime Organization (IMO)'s Marine Environment Protection Committee (MEPC), (2) an approved sewage comminuting and disinfecting system, or (3) an approved sewage holding tank.

In addition to the survey requirements, Annex IV contains prohibitions on the discharge of sewage. In particular, Annex IV prohibits the discharge of sewage into the sea except when:

- The vessel is discharging comminuted and disinfected sewage from an approved system at a distance of more than three nautical miles from the nearest land; or
- The vessel is discharging sewage which is not comminuted or disinfected (*i.e.,* untreated sewage), at a distance of more than 12 nautical miles from the nearest land, provided that sewage that has been stored in holding tanks, or sewage originating from spaces containing living animals, is not discharged instantaneously but at a moderate rate when the ship is *en route* and proceeding at a speed of at least four knots (*See* resolution MEPC.157(55) providing the recommendations on standards for the rate of discharge of untreated sewage; available in the docket for this Notice); or
- The vessel is using a type-approved STP that has been certified by the Administration to meet the applicable IMO recommendations and regulations, the test results are laid down in the ship's ISPPC, and the effluent does not produce visible floating solids or cause discoloration of the surrounding water.

2. Revised Annex IV Effluent Standards and Performance Tests for STPs

As previously noted, with respect to STPs, the MARPOL Annex IV regulations require vessel owners/operators to demonstrate that the vessel is equipped with a type-approved STP that meets the operational requirements based on standards and test methods developed by the MEPC. These MARPOL requirements for certification of an STP are functionally similar to the Coast Guard's certification process for MSDs: The STP undergoes a series of performance tests to demonstrate that the device produces an effluent meeting the prescribed standards outlined in the MARPOL Annex IV guidelines. Once this demonstration has been made, the Administration will issue a Certificate of Type Approval for that STP model.

On December 3, 1976, the IMO adopted effluent standards and guidelines for performance tests for STPs, and invited signatory governments to establish testing programs in accordance with the standards and guidelines. *See* resolution

MEPC.2(VI); available in the docket for this Notice. On October 13, 2006, the MEPC adopted revised effluent standards and performance tests for STPs. *See* resolution MEPC.159(55); available in the docket for this Notice. According to the latest resolution adopted by the MEPC, the revised effluent standards and performance tests reflect "current trends for the protection of the marine environment and developments in the design and effectiveness of commercially available sewage treatment plants * * *". *Id.* The revised standards and testing requirements apply to STPs installed onboard ships on or after January 1, 2010. Ships with STPs installed prior to that date may continue to use equipment certified to the previous standards. *See* resolution MEPC.2(VI) for previous standards.

A comparison of the previous (MEPC.2(VI)) and revised (MEPC.159(55)) MARPOL Annex IV effluent standards for STPs to the current CWA performance standards for Type II MSDs is presented in the following table (Table 2).

TABLE 2

ANALYTE	MARPOL 73/78 ANNEX IV STANDARDS FOR STPs		CWA PERFORMANCE STANDARDS FOR TYPE II MSDs
	MEPC.2(VI)	MEPC.159(55)	
Coliform	Geometric mean ≤ 250 per 100 mL (fecal coliform; most probable number).	Geometric mean ≤ 100 per 100 mL. (thermotolerant coliform)	≤ 200 per 100 mL (fecal coliform).
Total Suspended Solids (TSS) (mg/L).	Geometric mean ≤ 50	Geometric mean ≤ 35.	≤ 150.
pH		6–8.5.	
BOD_5 (mg/L)	Geometric mean ≤ 50	Geometric mean. ≤ 25	
COD (mg/L)		≤ 125.	
Residual Chlorine (mg/L)	As low as practicable	< .5.	

3. Coast Guard Policy With Respect to MARPOL Annex IV and the Revised Effluent Standards

Although the United States is not a party to MARPOL Annex IV, a U.S.-flagged vessel engaged in international voyages may still be required to comply with its provisions if the vessel operates in the waters of a port State that is a party to Annex IV. The Coast Guard has developed guidance and policies in order to address the potential for adverse port State control actions against U.S.-flagged vessels operating overseas. (This guidance also accords reciprocity to foreign-flagged vessels subject to Annex IV while operating in waters subject to the United States' jurisdiction.) *See* Navigation and Vessel Inspection Circular (NVIC) No. 1–09 (June 23, 2009); available in this docket.

Because the United States is not a party to MARPOL Annex IV, the Coast Guard cannot issue an ISPPC to domestically-flagged vessels, and instead issues a Statement of Voluntary Compliance (SOVC). U.S.-flagged vessels engaged in international voyages with sewage treatment devices that comply with Annex IV standards may be eligible to receive a SOVC. This certificate, issued by the Coast Guard or an Authorized Classification Society, demonstrates voluntary compliance with the revised Annex IV standards and testing requirements. While U.S.-flagged vessels are not required to obtain an SOVC, these vessels must still be able to demonstrate compliance with Annex IV while engaged in international voyages, or risk being detained overseas when operating in waters subject to the jurisdiction of parties to Annex IV.

The Coast Guard's policy outlined in NVIC No. 1–09 also notes that Coast Guard-certified Type II MSDs that are installed on or after January 1, 2010, and are unable to meet the revised Annex IV standards for STPs may still qualify as sewage comminuting and disinfecting devices under Annex IV, provided that the vessel is equipped with a satisfactorily sized storage tank. However, this may mean that some U.S.-flagged vessels utilizing Type II MSDs will be unable to discharge treated sewage effluent within three nautical miles of land where the port State is a signatory to MARPOL Annex IV.

B. Certain Alaska Cruise Ship Operations

Amid growing public concerns about the quantity and quality of discharges from cruise ships operating in certain areas in Alaska, Congress enacted an omnibus appropriation on December 21, 2000, that included new statutory requirements for certain cruise ships discharging graywater and sewage in Alaska (Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2001, Pub. L. 106–554, 114 Stat. 2763, enacting into law Title XIV of Division B of H.R. 5666, 114 Stat. 2763A–315, and codified at 33 U.S.C. 1901 Note (Title XIV)).

Title XIV does not supersede regulation of sewage discharges from cruise ships under CWA section 312. Rather, Title XIV established separate discharge standards for sewage *and* graywater discharges from those cruise ships authorized to carry 500 or more passengers and operating in the waters of the Alexander Archipelago, the navigable waters of the United States within the State of Alaska, and within the Kachemak Bay National Estuarine Research Reserve. Specifically, Title XIV requires that such cruise ships discharging within one nautical mile of shore, or discharging in any Alaskan waters when the vessel is traveling under six knots, must meet the following standards: for fecal coliform, the geometric mean of samples taken during any 30-day period may not exceed 20 fecal coliform per 100 mL, and no more than 10% of the samples may exceed 40 fecal coliform per 100 mL; for chlorine, total chlorine residual does not exceed 10.0 micrograms/liter. Title XIV also requires that the discharged effluent meet secondary treatment standards for 5-day biochemical oxygen demand, suspended solids, and pH. *See* 40 CFR 133.102 (secondary treatment standards). Finally, Title XIV requires that regulated cruise ships traveling at least six knots and discharging treated sewage outside of one nautical mile from shore must meet EPA's CWA section 312 performance standards for Type II MSDs (an effluent with a fecal coliform bacterial count not greater than 200 per

100 mL, and no more than 150 mg total suspended solids per liter).[4]

Like the CWA section 312 program, Title XIV is jointly implemented by EPA and the Coast Guard: Congress provided responsibility for regulatory discharge standards to EPA and responsibility for enforcement to the Coast Guard. In particular, Title XIV authorizes EPA to revise or develop additional standards for sewage and graywater discharges from cruise ships operating in applicable waters of Alaska, if appropriate. Alaska is also authorized to petition EPA to establish NDZs for sewage and graywater discharges from cruise ships regulated under Title XIV. Title XIV requires the Coast Guard to incorporate an inspection regime into its commercial vessel examination program that will verify compliance with the requirements of the statute. Title XIV also authorizes the Coast Guard to conduct unannounced inspections and require cruise ship owners/operators to keep logbooks of all sewage and graywater discharges, and provides for administrative and criminal penalties for violations of the statute's provisions. The Coast Guard has promulgated regulations to implement the various provisions of Title XIV. *See* 33 CFR 159.301 *et seq.*

VI. Additional Information on Submitting CBI

You are entitled to assert a business confidentiality claim covering all or part of the information you submit in response to this Notice, in accordance with the procedures described in EPA's CBI regulations, 40 CFR part 2, subpart B. Under 40 CFR 2.201(e), business confidentiality incorporates the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information. EPA will construe your failure to furnish a business confidentiality claim with your response as a waiver of that claim, and the information may be made available to the public or authorized representatives without further Notice to you.

The criteria EPA will use in determining whether material you claim as business confidential is entitled to confidential treatment are set forth at 40 CFR 2.208. This regulation provides, among other things, that you must satisfactorily demonstrate that: (1) The information is within the scope of business confidentiality as defined at 40 CFR 2.201(e); (2) that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; (3) the information is not and has not been reasonably obtainable by legitimate means without your consent; and (4) the disclosure of the information is likely to cause substantial competitive harm to your business position. *See* 40 CFR 2.208 (a)–(d).

Do not submit CBI to EPA through *http://www.regulations.gov* or e-mail. Clearly mark the page, paragraph and sentence when identifying the information that you claim to be CBI. *See* 40 CFR 2.203(b) for additional instructions on the method for asserting a business confidentiality claim. For CBI information on a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. EPA may, without further notice, provide the public or authorized representative with any information not subject to a CBI claim.

Dated: July 2, 2010.

Denise Keehner,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 2010–16909 Filed 7–9–10; 8:45 am]

BILLING CODE 6560–50–P

[4] Many of the cruise ships operating in the navigable waters of the United States are registered under flag Administrations who are signatories to MARPOL Annex IV. As such, these foreign-flagged cruise ships subject to Title XIV must meet the requirements of Annex IV, CWA section 312, and Title XIV.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R03–OW–2009–0985; FRL–9174–6]

Announcement To Extend the Recommended Determination Preparation Period for the Spruce No. 1 Surface Mine, Logan County, West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; Announcement of extension.

SUMMARY: EPA's regulations require that the Regional Administrator either withdraw the Spruce No. 1 Proposed Determination or prepare a Recommended Determination within 30 days after the conclusion of the public hearing (40 CFR 231.5(a)). However, in order to allow full consideration of the extensive record, including over 4000 public comments we received, EPA finds there is good cause to extend the time period provided in 40 CFR 231.5(a) until September 24, 2010. This time extension was made under authority of 40 CFR 231.8, which allows for such extensions upon a showing of good cause.

Dated: June 29, 2010.

William C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–16906 Filed 7–9–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:30 a.m. on Monday, July 12, 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.

DISCUSSION AGENDA: Memorandum and resolution re: Information Sharing Memorandum of Understanding.

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 Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–7043.

Dated: July 6, 2010.

Valerie J. Best,

Assistant Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2010–16969 Filed 7–8–10; 11:15 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 5, 2010.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Allcorp, Inc., Little Rock, Arkansas, to become a bank holding company by acquiring 100 percent of Community State Bancshares, Inc., Bradley, Arkansas, and thereby indirectly acquiring Community State Bank, Bradley, Arkansas.

Board of Governors of the Federal Reserve System, July 7, 2010.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2010–16917 Filed 7–12–10; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New; 60-Day Notice]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Prevention and Wellness-Leveraging National Organizations OMB No. 0990–New—Office of Public Health and Science

Abstract: The Office of Public Health and Science is requesting an approval by OMB on a new collection. The American Recovery and Reinvestment Act (ARRA) Prevention and Wellness-Leveraging National Organizations is a cooperative agreement program authorized under 42 U.S.C. 300k–1, 300, section 1701 of the Public Health Service Act, as amended. The funding opportunity focuses on two categories of activities:

- *Category A:* Obesity prevention through improved nutrition and increased physical activity
- *Category B:* Tobacco prevention and control

The National Organizations who receive funding will be supporting Communities Putting Prevention to Work (CPPW)-funded communities by providing expertise and technical assistance to help implement select MAPPS (Media, Access, Point of Purchase/Promotion, Pricing, and Social Support and Services) strategies through national organizations' systems and networks. The National Organizations will work to sustain community prevention efforts beyond Recovery Act CPPW funding and support the National Prevention Media Initiative through co-branding and augmenting HHS-developed media campaigns in communities.

The outcome measures that will be collected from funded National Organizations include approval/enactment of MAPPS-related policy, systems, and environmental change in physical activity, nutrition, and tobacco in funded communities. Since a critical component of the National Organizations is to support and assist CPPW-funded communities with their expert resources, the National Organizations and the CPPW-funded communities will share ownership of the same outcome measures. Because the National Organizations and their local affiliates have a distinct supporting role in these community-wide efforts, the output measures track the kinds of added-value to be derived from involvement of the National Organizations and its local affiliates in the community-wide efforts which should help drive the outcome measure.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Number of respondents	Number of responses per respondent	Average burden (in hours) per response	Total burden hours
National Organizations Measures Instrument.	Cooperative Agreement recipients—National Organizations.	10	4	2	80

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–16873 Filed 7–9–10; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: An Assessment of the Sustainability and Impact of Community Coalitions Once Federal Funding Has Expired—OMB No. 0990–NEW—Assistant Secretary Planning Evaluation (ASPE).

Abstract: The Office of the Assistant Secretary for Planning and Evaluation (ASPE) is requesting Office of Management and Budget (OMB) approval on a new collection to conduct a survey of community coalitions formerly funded by the Community Access Program (CAP)/Healthy Communities Access Program (HCAP) to learn about their sustainability and impact post-federal funding. ASPE will use the CAP/HCAP experience to examine the long-term sustainability of coalitions that successfully completed for grant funding from the Department of Health and Human Services (DHHS). As part of the study, a one-time, self-administered survey will be administered to the 260 coalitions funded through CAP/HCAP, providing a unique set of data to assess coalition sustainability and the factors that enable and hinder sustainability. The survey will focus on CAP/HCAP coalitions' structure, funding, activities, impact, and outcomes post-funding. The survey design and content is informed by a review of the literature on community coalitions including coalition organization, functions, impact, and sustainability. Results from the survey will also inform the selection of sites for key informant interviews and site visits. Specifically, telephone interviews will occur with a subset of 20 CAP/HCAP coalitions that have been sustained as well as 20 CAP/HCAP coalitions that have not been sustained. The key informant interviews will utilize a structured instrument tailored to the coalitions' experiences. Site visits will be conducted with seven coalitions that were sustained post-funding. Data collection activities will be completed within 18 months of OMB Clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Social and Community Service Managers/survey	260	1	35/60	152
Social and Community Service Managers/key informant interviews	40	1	45/60	30
Total				182

Seleda Perryman,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2010–16875 Filed 7–9–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0275]

60-Day Notice; Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the

proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office at (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Uniform Data Set (UDS)—Revision—OMB No. 0990–0275—Office of Public Health Science (OPHS)—Office of Minority Health.

Abstract: The Office of Minority Health is requesting an approval on a revised collection for three (3) years for a currently approved collection using the OMB approved Uniform Data Set (OMB No. 0990–0275), the tool used by OMH to collect program management and performance data for all OMH-funded projects. Respondents for this data collection include the project directors leading OMH-funded projects. Affected public includes not-for-profit institutions and State, Local, or Tribal Governments. The clearance is also to make modifications to the UDS tool, which includes the exclusion of a large number of data elements which significantly reduces reporting burden for grantees, a change in the name of the data collection tool from the UDS to the Performance Data System (PDS), and to increase the frequency of reporting from semi-annual to quarterly reporting. The modifications are intended to evolve the UDS into a system that improves OMH's ability to comply with Federal reporting requirements and monitor and evaluate performance by enabling the efficient collection of more performance-oriented data which are tied to OMH-wide performance reporting needs.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (if necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
PDS	OMH Grantee	104	4	2.5	1,040

Seleda Perryman,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2010–16876 Filed 7–9–10; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier OS–0990–New; 60-day Notice]

Agency Information Collection Request. 60–Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluation of Pregnancy Prevention Approaches: Implementation Study Data Collection—OMB No. 0970–0360—Office of Adolescent Health in collaboration with the Administration for Children and Families.

Abstract: The Office of Adolescent Health (OAH), Office of Public Health and Science (OPHS), U.S. Department of Health and Human Services (HHS), is requesting approval by OMB on a new collection. OAH is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention evaluation activities.

OAH has provided funding to ACF to oversee the implementation of the Evaluation of Adolescent Pregnancy Prevention Approaches (PPA). PPA is a random assignment evaluation which will expand available evidence on effective ways to reduce teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to eight program sites. The findings of the evaluation will be of interest to the general public, to policymakers, and to organizations interested in teen pregnancy prevention.

OAH and ACF are proposing implementation data collection activity as part of the PPA evaluation. The proposed activity involves the collection of information from program records and site visits at two to three points in the program implementation period. Understanding the programs, documenting their implementation and context, and assessing fidelity of implementation will allow for description of each implemented program and the treatment-control contrast evaluated in each site. It will also help in interpreting impact findings, differences in impacts across programs, and differences in impacts across locations or population subgroups.

Respondents: Semi-structured individual and group interviews will be held with program developers, program leaders and staff, participating youths,

school representatives, program partners, and other community members knowledgeable about related services for adolescents. All information will be collected by trained professional staff.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Staff and community member interviews (Master Topic Guide).	Program staff and community members.	48	1	1.5	72
Guide for Discussion with Control Group Schools about Counterfactual.	Control group school staff.	48	1	1	48
Guide for Group Discussion with Frontline Staff ..	Frontline Program Staff	48	1	1.5	72
Guide for Group Discussion with Participating Youths.	Participating Youth	216	1	1.5	324
Total	.....	.....	.....	.....	516

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Clearance Officer.

[FR Doc. 2010–16877 Filed 7–9–10; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

60-Day Notice; Agency Information Collection Request; 60–Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Evaluation of Pregnancy Prevention Approaches: First Follow-Up Data Collection—OMB No. 0970–0360—Office of Adolescent Health in collaboration with the Administration for Children and Families.

Abstract: The Office of Adolescent Health (OAH), Office of Public Health and Science (OPHS), U.S. Department of Health and Human Services (HHS), is requesting approval by OMB on a new collection. OAH is overseeing and coordinating adolescent pregnancy prevention evaluation efforts as part of the Teen Pregnancy Prevention Initiative. OAH is working collaboratively with the Office of the Assistant Secretary for Planning and Evaluation (ASPE), the Centers for Disease Control and Prevention (CDC), and the Administration for Children and Families (ACF) on adolescent pregnancy prevention activities.

OAH has provided funding to ACF to oversee the implementation of the Evaluation of Adolescent Pregnancy Prevention Approaches (PPA). PPA is a random assignment evaluation which will expand available evidence on effective ways to reduce teen pregnancy. The evaluation will document and test a range of pregnancy prevention approaches in up to eight program sites. The findings of the evaluation will be of interest to the general public, to policy-makers, and to organizations interested in teen pregnancy prevention.

OAH and ACF are proposing a data collection activity as part of the PPA evaluation. This proposed information collection activity focuses on collecting follow-up data from a self-administered questionnaire which will be analyzed to determine program effects. Through a survey instrument, respondents will be asked to answer carefully selected questions about demographics and risk and protective factors related to teen pregnancy.

Respondents: The data will be collected through private, self-administered questionnaires completed by study participants, *i.e.* adolescents assigned to a select school or community teen pregnancy prevention program or to a control group. Surveys will be distributed and collected by trained professional staff.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms	Type of respondent	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
First Follow-up Instrument	Participating Youth and Control Group Youth.	3,060	1	0.5	1,530

Seleda Perryman,

Paperwork Reduction Act Clearance Officer, Office of the Secretary.

[FR Doc. 2010–16871 Filed 7–9–10; 8:45 am]

BILLING CODE 4150–30–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10335, CMS–R–240 and CMS–10267]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Current State Practices Related to Payments to Providers for Health Care-Acquired Conditions; *Use:* The Patient Protection and Affordable Care Act of 2010 (Affordable Care Act), enacted March 23, 2010 includes provisions prohibiting Federal Financial Participation to States for payments for health care-acquired conditions (HCACs). Section 2702(a) specifically requires that the Secretary identify current State practices that prohibit payment for HCACs and incorporate those practices or elements of those practices which she determines appropriate for application to the Medicaid program. In accordance with section 2702(a) of the Affordable Care Act, CMS is issuing this survey to States to obtain information on current State Medicaid practices for prohibiting payments for HCACs. *Form Number:* CMS–10335 (OMB#: 0938–New); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 50; *Total Annual Responses:* 50; *Total Annual Hours:* 50 (For policy questions regarding this collection contact Venesa Day at 410–786–8281. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Prospective Payments for Hospital Outpatient Service and Supporting Regulations is 42 CFR 413.65; *Use:* Section 1833(t) of the Social Security Act requires the Secretary to establish a prospective payment system (PPS) for hospital outpatient services. Successful implementation of an outpatient PPS requires that CMS distinguish facilities or organizations that function as departments of hospitals from those that are freestanding, so that CMS can determine which services should be paid under the outpatient prospective payment system (OPPS), the clinical laboratory fee schedule, or other payment provisions applicable to services furnished to hospital outpatients. Information from the sections 413.65(b)(3) and (c) reports is needed to make these determinations. In addition, section 1866(b)(2) of the Act authorizes hospitals and other providers to impose deductible and coinsurance charges for facility services, but does not allow such charges by facilities or organizations which are not provider-based. Implementation of this provision requires that CMS have information from the required reports, so it can determine which facilities are provider-based. *Form Number:* CMS–R–240 (OMB#: 0938–0798); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 905; *Total Annual Responses:* 500,405; *Total Annual Hours:* 26,563 (For policy questions regarding this collection contact Daniel Schroder at 410–786–7452. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* QualityNet Identity Management System (QIMS) Account Form; *Use:* The QualityNet Identity Management System (QIMS) account registration form must be completed by any new persons needing access to Consolidated Renal Operations in a Web Enabled Network (CROWNWeb). The 8,561 existing accounts owners will not have to reregister for new user accounts. The CROWNWeb user community is composed of CMS employees, ESRD Network Organization staff and dialysis facilities staff. The CROWNWeb system is the system used as the collection point of data necessary for entitlement of ESRD patients to Medicare benefits and Federal Government monitoring and assessing of quality and type of care provided to renal patients. The data collected in QIMS will provide the necessary security measures for creating and maintaining active CROWNWeb user accounts and collection of audit trail information required by the CMS Information Security Officers (ISSO). *Form Number:* CMS–10267 (OMB#: 0938–1050); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 7,439; *Total Annual Responses:* 7,439; *Total Annual Hours:* 3,720. (For policy questions regarding this collection contact Michelle Tucker at 410–786–0376. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *September 10, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Date: July 2, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–16658 Filed 7–8–10; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Tribal Child Support Enforcement Direct Funding. *Request:* 45 CFR 309—Plan Form OCSE 34A; Statistical Reporting.

OMB No.: 0970–0218.

Description: The final rule within 45 CFR part 309, published in the **Federal Register** on March 30, 2004, contains a regulatory reporting requirement that, in order to receive funding for a Tribal IV–D program a Tribe or Tribal organization must submit a plan describing how the Tribe or Tribal organization meets or plans to meet the objectives of section 455(f) of the Social Security Act, including establishing paternity, establishing, modifying, and enforcing support orders, and locating noncustodial parents. The plan is required for all Tribes requesting funding; however, once a Tribe has met the requirements to operate a comprehensive program, a new plan is not required annually unless a Tribe makes changes to its title IV–D program. Tribes and Tribal organizations must respond if they wish to operate a fully funded program. In addition, any Tribe or Tribal organization participating in the program will be required to submit form OCSE 34A. This paperwork collection activity is set to expire in September, 2010.

Respondents: Tribes and Tribal Organizations.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR 309—Plan	33	1	480	15,840
Form OCSE 34 A	49	4	8	1,568

Estimated Total Annual Burden Hours: 17,408.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project. *Fax:* 202–395–7285. *E-mail: OIRA_SUBMISSION@OMB.EOP.GOV. Attn:* Desk Officer for the Administration for Children and Families.

Dated: July 6, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–16842 Filed 7–9–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Indians Into Psychology Program; Correction

AGENCY: Indian Health Service, HHS.

ACTION: Notice correction.

SUMMARY: The Indian Health Service published a document in the **Federal Register** on June 25, 2010, announcing a Funding Opportunity Number: HHS–IHS–2010–INPSY–0001, for the Indians Into Psychology Program. The document contained an incorrect Funding Opportunity Number.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Berryhill, Office of Public Health Support, Division of Health Professions Support, 801 Thompson Avenue, TMP Suite 450A, Rockville, MD 20852, Telephone 301–443–2443.

Correction

In the **Federal Register** of June 25, 2010, in FR Doc. 2010–15423, on page 36414, in the second column, correct the "Funding Opportunity Number" caption to read:

Funding Opportunity Number: HHS–2010–IHS–INPSY–0001.

Dated: July 1, 2010.

Yvette Roubideaux,

Director of Indian Health Service.

[FR Doc. 2010–16742 Filed 7–9–10; 8:45 am]

BILLING CODE 4165–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Pharmacology, Physiology, Biological Chemistry Special Emphasis Panel.

Date: July 30, 2010.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: C. Craig Hyde, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN18, Bethesda, MD 20892, 301–435–3825, *ch2v@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and

Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 2, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16826 Filed 7–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Network Infrastructure for Aging Research.

Date: July 20, 2010.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. 301–402–7705. *johnsonj9@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: July 2, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16828 Filed 7–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Craniofacial Synostosis: Critical Gaps in Knowledge.

Date: August 5, 2010.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter Zelazowski, PhD, Scientific Review Officer, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, 301–435–6902, *peter.zelazowski@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos.93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: July 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16902 Filed 7–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 30, 2010, 10 a.m. to July 1, 2010, 2 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on June 10, 2010, 75 FR 32956–32957.

The meeting will be held July 21, 2010 to July 22, 2010. The meeting time and location remain the same. The meeting is closed to the public.

Dated: July 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16905 Filed 7–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Health and Behavior.

Date: July 26, 2010.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martha M. Faraday, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892, 301–435–3575, *faradaym@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: July 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16903 Filed 7–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Digestive Diseases and Nutrition Mentored Applications Review.

Date: July 28, 2010.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 755, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7799, *ls38z@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Ancillary Research.

Date: July 30, 2010.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Thomas A. Tatham, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 760, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–3993, *tathamt@mail.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research.

Date: September 14, 2010.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 6, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–16900 Filed 7–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Request for Information (RFI) on the National Institutes of Health Plan to Develop the Genetic Testing Registry; Notice

On June 11, 2010, the National Institutes of Health (NIH), an agency within the Department of Health and Human Services (HHS), published a Request for Information (RFI) on its plan to develop a voluntary Genetic Testing Registry (GTR), a centralized public resource that will provide information about the availability, scientific basis, and usefulness of genetic tests (*see* Vol. 75, No. 112, page 33317). The NIH is extending the comment period for the RFI from July 12, 2010, to August 2, 2010. A copy of the RFI is also available at *http://www.ncbi.nlm.nih.gov/gtr/.*

DATES: To ensure consideration, comments must now be received by August 2, 2010.

ADDRESSES: Individuals, groups, and organizations interested in commenting on the NIH plan to develop the GTR, as outlined in this RFI, may submit comments by e-mail to *GTR@od.nih.gov* or by mail to the following address: NIH GTR RFI Comments, National Institutes of Health, Office of Science Policy, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892. Comments will be made publicly available, including any personally identifiable or confidential business information that they contain. Trade secrets should not be submitted.

FOR FURTHER INFORMATION CONTACT: Cathy Fomous, PhD, NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892; telephone 301–496–9838; fax 301–496–9839; e-mail *CFomous@od.nih.gov.*

Dated: July 7, 2010.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 2010–16904 Filed 7–9–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2004–F–0069] (formerly Docket No. 2004F–0455)

Sterigenics International, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 3M4744) proposing that the food additive regulations be amended to provide for the safe use of ionizing radiation in the production of shelf stable foods, including multiple ingredient shelf stable foods.

FOR FURTHER INFORMATION CONTACT: Lane A. Highbarger, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1204.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 30, 2004 (69 FR 69606), FDA announced that a food additive petition (FAP 3M4744) had been filed by Sterigenics International, Inc., P.O. Box 17349, Memphis, TN 31817–0349 (current address 2015 Spring Rd., suite 650, Oak Brook, IL 60523). The petition proposed to amend the food additive regulations in 21 CFR part 179 *Irradiation in the Production, Processing and Handling of Food* to provide for the

safe use of ionizing radiation in the production of fully cooked shelf stable foods, including fully cooked multiple ingredient shelf stable foods, where the absorbed dose required to cause a 12-log reduction in *Clostridium botulinum* has been established. Sterigenics International, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: June 30, 2010.

Mitchell A. Cheeseman,

Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 2010–16884 Filed 7–12–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2010–0560]

Information Collection Request to Office of Management and Budget; OMB; Control Number: 1625–New

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an approval for the following collection of information: 1625–New, Port Stakeholder Interface Form. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before September 10, 2010.

ADDRESSES: To avoid duplicate submissions to the docket [USCG–2010–0560], please use only one of the following means:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (DMF) (M–30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand deliver:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from:

Commandant (CG–611), ATTN Paperwork Reduction Act Manager, US Coast Guard, 2100 2ND ST SW. STOP 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2010–0560], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–½ by 11 inches, suitable for copying and electronic filing.

If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG–2010–0560 " and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Information Collection Request

Title: Port Stakeholder Interface Form.

OMB Control Number: 1625–New.

Summary: This information is needed to ensure the Coast Guard can gather critical cargo information from port stakeholders in the event of a port closure or disruption to the Marine Transportation System.

Need: Section 202 of Public Law 109–347 authorizes the Secretary Department of Homeland Security to develop and update, as necessary, protocols for the resumption of trade in the event of a transportation disruption/security incident. It further instructs that appropriate factors be considered for establishing prioritization of vessels and cargo determined by the President to be critical for response and recovery, including factors relating to public health, national security, and economic need.

Forms: CG–3142.

Respondents: Owners and operators of port facilities.

Frequency: On occasion.

Burden Estimate: This is a new collection with an estimated burden hours of 12,000 per year.

Dated: June 18, 2010.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2010–16858 Filed 7–9–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0123.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Regulations Relating to Recordation and Enforcement of Trademarks and Copyrights (Part 133 of the Customs Regulations). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (75 FR 24731) on May 5, 2010, allowing for a 60-day comment period. One comment was received. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before August 11, 2010.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

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

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Regulations Relating to Recordation and Enforcement of Trademark and Copyrights (Part 133 of the Customs Regulations).

OMB Number: 1651–0123.

Form Number: None.

Abstract: In accordance with 19 CFR part 133, trademark and trade name owners and those claiming copyright protection may submit information to CBP to enable CBP officers to identify violating articles at the borders. In addition, parties seeking to have merchandise excluded from entry must provide proof to CBP of the validity of the rights they seek to protect. The information collected by CBP is used to identify infringing goods at the borders and determine if such goods infringe on intellectual property rights for which federal law provides import protection. Respondents may submit their information to CBP electronically at *https://apps.cbp.gov/e-recordations/,* or they may submit their information on paper in accordance with 19 CFR 133.2 and 133.3 for trademarks, or 19 CFR 133.32 and 133.33 for copyrights.

Current Actions: This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses and Individuals.

Estimated Number of Respondents: 2,000.

Estimated Time per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 4,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: July 6, 2010 .

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–16880 Filed 7–9–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Revision of a Currently Approved Collection: Users, Uses, and Benefits of Landsat Satellite Imagery

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice; request for comments of a currently approved collection (1028–0091).

SUMMARY: We (U.S. Geological Survey) will ask the Office of Management and Budget (OMS) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 (PRA), and as a part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. As a federal agency, we may not conduct or sponsor and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: You must submit comment on or before September 10, 2010.

ADDRESSES: Please send your comments concerning the IC to Phadrea Ponds, Information Collection Clearance Officer, U.S. Geological Survey, 2150–C Centre Avenue, Fort Collins, CO 80526 (mail); (970) 226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–0091.

FOR FURTHER INFORMATION CONTACT: Holly Miller by mail at U.S. Geological Survey, 2150–C Centre Avenue, Fort Collins, CO 80526, or by telephone at (970) 226–9133.

SUPPLEMENTARY INFORMATION:

I. Abstract

In 2008, the USGS's Land Remote Sensing (LRS) Program initiated a study to determine the users, uses, and benefits of Landsat imagery. Before that study, there had been very limited assessments of the users of this imagery to better understand the uses and benefits; the last comprehensive evaluation of the benefits of Landsat was completed over 30 years ago. The current information collection (1028–0091) provided up-to-date information about the current users and uses of Landsat imagery, as well as the benefits derived from the availability of the imagery. We are proposing revisions to the existing collection that will allow us to focus specifically on Landsat users where the last collection provided general information from a broader population of moderate resolution imagery users. This revised collection will allow the LRS Program to examine the changes in users, uses and benefits resulting from Landsat imagery now being offered at no cost to the users. This recent policy change has resulted in a dramatic increase in the amount of imagery being requested and distributed directly from USGS. Because of the influx of new users, the LRS Program would like to know if the needs of the new users are similar or different when compared to the current roster of established users. The Program will use the information from this collection to understand if they are currently meeting the needs of their user community. Questions will be asked to determine user characteristics, uses and benefits of Landsat imagery.

II. Data

OMB Control Number: 1028–0091.

Title: Users, Uses, and Benefits of Landsat Satellite Imagery.

Type of Request: Revision of a currently approved collection.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time only.

Estimated Number and Description of Respondents: 2500 domestic and international state and local land management officials, and university scientists and researchers.

Estimated Total Annual Responses: 2500.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden Hours: 1250.

III. Request for Comments

We invite comment concerning this IC on: (1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden for this 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. Please note that the comments you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. 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 it will be done.

Dated July 2, 1010.

Bryant Cramer,

Associate Director for Geography.

[FR Doc. 2010–16736 Filed 7–9–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–R–2010–N104; 81640–1265–0000–S3]

San Pablo Bay National Wildlife Refuge, Sonoma, Napa, and Solano Counties, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments: draft comprehensive conservation plan/environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of a Draft Comprehensive Conservation Plan/Environmental Assessment (CCP/EA) for the San Pablo Bay National Wildlife Refuge for public review and comment. The CCP/EA, prepared under the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, describes how the Service will manage the Refuge for the next 15 years. Draft compatibility determinations for several existing and proposed public uses are also available for review and public comment with the Draft CCP/EA.

DATES: Written comments must be received at the address below on or before August 11, 2010.

ADDRESSES: For more information on obtaining documents and submitting comments, see "Review and Comment" under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Winnie Chan, Refuge Planner, 9500 Thornton Avenue, Newark, CA 94560, phone (510) 792–0222.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose in developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, environmental education, and interpretation.

We initiated the CCP/EA for the San Pablo Bay National Wildlife Refuge in July 2006. At that time and throughout the process, we requested, considered, and incorporated public scoping comments in numerous ways. Our public outreach has included a **Federal Register** notice of intent published on July 26, 2006 (71 FR 42413), one stakeholder meeting, one public meeting, planning updates, and a CCP Web page. We received approximately six scoping comments during the 45-day public comment period.

Background

The Refuge lies on the northernmost end of the San Francisco Bay Estuary and was formally established in 1970, but lands were not acquired until 1974. The Service owns 1,990 acres and manages 11,200 leased acres within the 23,700-acre acquisition boundary. The Refuge provides large expanses of tidal marsh that protects endangered species, and conserves migratory birds and other wildlife.

Alternatives

The Draft CCP/EA identifies and evaluates three alternatives for managing San Pablo Bay National

Wildlife Refuge for the next 15 years. The alternative that appears to best meet the Refuge purposes is identified as the preferred alternative. The preferred alternative is identified based on the analysis presented in the Draft CCP/EA, which may be modified following the completion of the public comment period based on comments received from other agencies, Tribal governments, nongovernmental organizations, or individuals.

Under Alternative A, the no action alternative, we would continue to manage the Refuge as we have in the recent past. Existing tidal restoration activities would continue. The existing hunting, fishing, wildlife observation, photography, environmental education, and interpretation opportunities would remain unchanged.

Under Alternative B, the Service would develop an inventory and monitoring program; expand tidal restoration and enhancement activities for the benefit of migratory birds, endangered species, and other native wildlife; improve and expand visitor services by developing new public access locations; develop shoreline fishing locations; and provide some additional environmental education programs.

Under Alternative C (preferred alternative), the Service would incorporate those developments outlined in Alternative B, but would also emphasize wildlife management by studying population health and developing population goals for wildlife; provide greater interpretive opportunities; and substantially expand the environmental education program.

Review and Comment

The Draft CCP/EA will be available for viewing and downloading online at *http://www.fws.gov/cno/refuges/planning/ccp.cfm.* Copies of the Draft CCP/EA may also be obtained by writing to the SF Bay National Wildlife Refuge Complex, Attn: Winnie Chan, 9500 Thornton Avenue, Newark, CA 94560.

Copies of the Draft CCP/EA may also be viewed at the San Francisco Bay National Wildlife Refuge Complex, 1 Marshlands Road, Fremont, CA 94536; San Pablo Bay National Wildlife Refuge in Petaluma, CA (call (707) 769–4200 for directions); and John F. Kennedy Library, 505 Santa Clara, Vallejo, CA 94590.

Comments on the Draft CCP/EA should be addressed to: Winnie Chan, SF Bay NWRC, 9500 Thornton Avenue, Newark, CA 94560. Comments may also be faxed to (510) 792–5828 or sent via e-mail to *sfbaynwrc@fws.gov*.

At the end of the review and comment period for this Draft CCP/EA, the Service will analyze comments and address them in the Final CCP/EA. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 6, 2010.

Ken McDermond,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2010–16867 Filed 7–9–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000.L10200000.DD0000; HAG 10–0316]

Meeting; Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast Oregon Resource Advisory Council.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southeast Oregon Resource Advisory Council (SEORAC) will meet as indicated below:

DATES: The SEORAC field trip will begin at 10 a.m. p.d.t. on August 2, 2010. The SEORAC business meeting will begin 8 a.m. p.d.t. on August 3, 2010.

ADDRESSES: The field trip will meet at the Burns District Office, 28910 Highway 20 West, Hines, Oregon 97738 at the above time. The business meeting will meet at the Harney County Community Center Conference Room, 484 Broadway, Burns, Oregon 97720.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218 or e-mail *mark_wilkening@blm.gov.*

SUPPLEMENTARY INFORMATION: The business meeting will take place on August 3, 2010 at the Harney County Community Center Conference Room, 484 Broadway, Burns Oregon, from 8 a.m. to 4 p.m. The meeting may include such topics as update on wild horses & burros, updates on Lakeview and Southeast Oregon Resource Management Plans, the NEPA process, litigation updates, update on the melding of Sage-grouse opportunity map with the State of Oregon version, subgroup reports, and other matters as may reasonably come before the council. The public is welcome to attend all portions of the meeting and may make oral comments to the Council at 1 p.m. on August 3, 2010. Those who verbally address the SEORAC are asked to provide a written statement of their comments or presentation. Unless otherwise approved by the SEORAC Chair, the public comment period will last no longer than 15 minutes, and each speaker may address the SEORAC for a maximum of five minutes. If reasonable accommodation is required, please contact the BLM Vale District Office at (541) 473–6213 as soon as possible.

Donald N. Gonzalez,

Vale District Manager.

[FR Doc. 2010–16872 Filed 7–9–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding Against Federal Acknowledgment of the Choctaw Nation of Florida Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed finding.

SUMMARY: Pursuant to 25 CFR 83.10(e), notice is hereby given that the Assistant Secretary—Indian Affairs (AS–IA) proposes to decline to acknowledge that the group known as the "Choctaw Nation of Florida" (CNF), Petitioner #288, c/o Mr. Alfonso James, Jr., Post Office Box 6322, Marianna, Florida, 32447, is an Indian tribe within the meaning of Federal law. This notice is based on an investigation that determined that the petitioner does not meet one of the seven mandatory criteria set forth in 25 CFR Part 83.7, specifically criterion 83.7(e), and therefore does not meet the requirements for a government-to-government relationship with the United States.

DATES: Comments on this proposed finding (PF) are due on or before January 10, 2011. The petitioner then has a minimum of 60 days to respond to those comments. *See* the **SUPPLEMENTARY INFORMATION** section of this notice for more information about these dates.

ADDRESSES: Comments on the proposed finding or requests for a copy of the report which summarizes the evidence, reasoning, and analyses that are the basis for this proposed finding, should be addressed to the Office of Federal Acknowledgment, 1951 Constitution Avenue, NW., MS–34B–SIB, Washington, DC 20240. Interested or informed parties must provide copies of their submissions to the petitioner.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Director, Office of Federal Acknowledgment, (202) 513–7650.

SUPPLEMENTARY INFORMATION: This notice is published in accordance with authority delegated by the Secretary of the Interior (Secretary) to the AS–IA by 209 DM 8.

The petitioner claims to be a group of Choctaw Indians that migrated from North Carolina to Georgia and then Florida following the Indian removal of the 1830s. None of the available evidence in this petition or that found by OFA researchers demonstrates the validity of this claim.

All the available evidence in the petition record indicates the CNF is an association formed in 2003 of individuals who claim but have not documented Indian ancestry. Indeed, the evidence shows the group's ancestors were consistently identified as non-Indians and as living in non-Indian communities. The group incorporated in the State of Texas in July 2003, but has an office in Marianna, Florida, on the eastern part of the Florida panhandle. Available evidence indicates the group began holding meetings probably no earlier than September 2004. The regulations provide that the Department may not acknowledge associations, organizations, corporations, or groups of any character formed in recent times. Since early 2004, the membership of the group, as reflected on various membership lists, has fluctuated from a low of 52 to a high of 158.

To meet criterion 83.7(e), the petitioner must demonstrate Indian ancestry through descent from a historical Indian tribe, or tribes which combined and functioned as a single entity. The petitioner claims its members descend from the historical Choctaw Indian tribe. Most members of the petitioner claim to descend from the historical Choctaw Indian tribe through their direct ancestors Burton Hunter (ca. 1833—bef. 1907) and his wife Lucy (ca. 1842—1907). None of the available evidence demonstrates this claimed descent for Burton Hunter or his spouse Lucy from the Choctaw Indian tribe or any other Indian tribe. To reach this conclusion, the Department examined an extensive body of documentation submitted by the petitioner and obtained by Department researchers. The documentation included Federal and State censuses from 1850 to 1945, probate records from Jackson County, Florida, birth, marriage and death certificates from the State of Florida and elsewhere, church records from Jackson County, Florida, World War I civilian draft registration records, homestead application records from the General Land Office, Indian Agency rolls (with application materials) and censuses from 1848 to 1940, and historical treaties dealing with the Choctaw Indian Nation.

All the evidence clearly shows that Burton and Lucy Hunter, their relatives, and descendants were not identified as Indian and do not descend from a historical Indian tribe. No Federal or State censuses between 1870 and 1945 demonstrated that these individuals identified themselves, or that the census enumerators identified them, as Choctaw or Indian, or as belonging to Choctaw or any other Indian tribe. No county court, property, or probate records identified them as Choctaw or Indian, or as belonging to Choctaw or any other Indian tribe. No marriage, church, military, or vital records stated that the petitioner's ancestors were identified as Choctaw or Indian, or as belonging to Choctaw or any other Indian tribe. Rather, the evidence clearly shows Burton and Lucy Hunter, their relatives and their descendants were consistently identified as non-Indians living in non-Indian communities.

The Department also examined evidence, submitted by the petitioner or obtained by the Department, for six current members or their family lines that apparently descended from an individual other than the Burton or Lucy Hunter named above. This evidence included Federal and State censuses from 1850 to 1945, birth, marriage, and death records, and Indian agency rolls and censuses from 1848 to 1940. None of this evidence for these individuals or their ancestors demonstrated descent from the historical Choctaw Indian tribe or any other Indian tribe. Instead, all of the evidence showed they were consistently identified as non-Indians living in non-Indian communities.

To summarize, the petitioner claims to have descended as a group from the historical tribe of Choctaw Indians. There is no primary or reliable secondary evidence submitted by the petitioner or located by OFA showing that any of the named ancestors or members of the group descended from the historical Choctaw Indian tribe or any other Indian tribe. None of the documentation on the petitioner's members and their individual ancestors, submitted by the petitioner or found by OFA researchers, supports the petitioner's claims of descent from the historical Choctaw Indian tribe or any other Indian tribe. The extensive evidence does not support any Indian ancestry. In fact, the evidence clearly shows the petitioner's members and ancestors were consistently identified as non-Indians living in non-Indian communities.

The Department proposes to decline to acknowledge Petitioner #288 as an Indian tribe because the evidence clearly establishes that the members of the group do not descend from a historical Indian tribe as required under mandatory criterion 83.7(e). The AS–IA concludes that the CNF clearly does not meet criterion 83.7(e), which satisfies the requirement for issuing a PF under 83.10(e). If, in the response to the PF, the petitioner provides sufficient evidence that it meets criterion 83.7(e) under the reasonable likelihood standard, the Department will undertake a review of the petition under all seven mandatory criteria. If, in the response to the PF, the petitioner does not provide sufficient evidence that it meets criterion 83.7(e) under the reasonable likelihood standard, the AS–IA will issue the final determination based upon criterion 83.7(e) only.

Publication of the Assistant Secretary's PF in the **Federal Register** initiates a 180-day comment period during which the petitioner and interested and informed parties may submit arguments and evidence to support or rebut the conclusions in the PF (25 CFR 83.10(i)). Comments should be submitted in writing to the address listed in the **ADDRESSES** section of this notice. Interested or informed parties must provide copies of their submissions to the petitioner. The regulations at 25 CFR 83.10(k) provide petitioner with a minimum of 60 days to respond to any submissions on the PF received from interested and informed parties during the comment period.

At the end of the periods for comment and response on a PF, the AS–IA will consult with the petitioner and interested parties to determine an equitable timeframe for consideration of written arguments and evidence. The Department will notify the petitioner and interested parties of the date such consideration begins. After consideration of the written arguments and evidence rebutting or supporting the PF and the petitioner's response to the comments of interested parties and

informed parties, the AS–IA will make a final determination regarding the petitioner's status. The Department will publish a summary of this determination in the **Federal Register**.

Dated: July 2, 2010.

Donald Laverdure,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 2010–16939 Filed 7–9–10; 8:45 am]

BILLING CODE 4310–G1–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV0100000 L10600000.JJ0000 LXSS130F0000 241A; 10–08807; MO#4500013593; TAS: 14X1109]

Notice of Temporary Closures on Public Lands in Northwestern Elko County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closures.

SUMMARY: Notice is hereby given that temporary closures to public access, use, and occupancy will be in effect for the dates and times specified in this Notice on public lands administered by the Bureau of Land Management (BLM), Tuscarora Field Office, Elko, Nevada within the Owyhee, Rock Creek, and Little Humboldt Wild Horse Herd Management Areas (HMAs) in the northwestern portion of Elko County, Nevada.

DATES: This temporary closure will be in effect on the Owyhee, Rock Creek and Little Humboldt Wild Horse HMAs from 12:01 a.m. PST on Tuesday, July 6, 2010 until Saturday, July 31, 2010 at 11:59 p.m. PST, or up to 30 days after the start of the gather operation.

ADDRESSES: Tuscarora Field Office, 3900 E. Idaho Street, Elko, Nevada 89801; Web site: *http://www.blm.gov/nv/st/en/fo/elko_field_office.html.*

FOR FURTHER INFORMATION CONTACT: David Overcast, Tuscarora Field Manager, 775–753–0320. 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 normal business hours. The FIRS is available 24 hours a day, seven days a week, to leave a message or question with the above individuals. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: This temporary closure affects public land in the Owyhee, Rock Creek and Little Humboldt Wild Horse HMAs in Elko County, Nevada. The legal description of the affected public lands is:

Mount Diablo Meridian, Nevada

T. 45 N., R. 48 E.,
secs. 11, 13, and 14,
sec. 24, NE¼, N½NW¼, SW¼NW¼, NW¼SW¼, S½SW¼, NE¼SE¼, and SW¼SE¼;
sec. 25, NW¼, E½SE¼, and SW¼SE¼;
sec. 35, NE¼NE¼, W½NE¼, W½, and W½SE¼;
sec. 36, E½, SE¼NW¼, and E½SW¼.
T. 45 N., R. 49 E.,
secs. 19, 20, and 29 to 32, inclusive.
T. 44 N., R. 48 E.,
sec. 2, NW¼NE¼, W½, and E½SE¼;
sec. 11, NE¼NE¼, W½, and W½SE¼;
sec. 13;
sec. 14, W½NE¼, SE¼NE¼, NW¼, and S½;
sec. 24, NE¼NE¼, W½NE¼, W½, and SE¼.
T. 44 N., R. 49 E.,
sec. 19, NE¼, N½NW¼, SE¼NW¼, SW¼SW¼, N½SE¼, and SE¼SE¼.
T. 43 N., R. 50 E.,
sec. 27, NE¼NE¼, SW¼NE¼, W½SE¼;
sec. 28;
sec. 29, NE¼NE¼, S½NE¼, N½SE¼, and SE¼SE¼;
secs. 30 and 31;
sec. 32, E½NE¼ and E½SE¼;
secs. 33 and 34.
T. 42 N., R. 50 E.,
secs. 3, and 4;
sec. 5, E½NE¼, E½SE¼, and SW¼SE¼;
sec. 6, NW¼NE¼ and NW¼;
sec. 19, E½, SE¼NW¼, NE¼SW¼, and S½SW¼;
sec. 20, E½;
sec. 29, NE¼, SE¼NW¼, NW¼SW¼, S½SW¼, and NE¼SE¼;
sec. 30.
T. 42 N., R. 49 E.,
sec. 33, NW¼NE¼, NW¼, NE¼SW¼, W½SW¼, and E½SE¼.
T. 41 N., R. 49 E.,
sec. 4, NW¼NE¼, S½NE¼, NW¼NW¼, and SE¼;
sec. 9, NE¼ and E½SE¼.
T. 41 N., R. 48 E.,
secs. 6, 7, and 18.
T. 41 N., R. 47 E.,
secs. 1, 12, and 13.
T. 40 N., R. 48 E.,
sec. 27, N½ and SE¼;
sec. 28, W½;
sec. 29, NE¼, NE¼NW¼, SW¼NW¼, NW¼SW¼, S½SW¼, N½SE¼, and SE¼SE¼;
sec. 32, N½NW¼, SE¼SW¼, and S½SE¼.

The temporary closure areas encompass 26,813 acres, more or less.

This temporary closure will limit public access to protect persons, property, public lands and public land resources. The closure will ensure the safety and welfare of the public, contractors, and government employees, and provide for the orderly implementation of authorized actions to gather excess wild horses. The temporary closure will prevent public access, use, and occupancy during wild horse capture operations scheduled to occur between July 6, 2010, and July 31, 2010.

Not all subject lands will be temporarily closed during the entire period. Areas temporarily closed to public access will be posted at main entry points with signs, barricades, if appropriate, and copies of this temporary closure notice. The sites identified for temporary closures are historically used gather sites and holding locations. Some of the sites are on public land and some are on privately owned land. The temporary closures will be in effect only on public lands. The public will be authorized to use those areas where capture operations are not in progress. Areas from which the public will be temporarily excluded will be dependent upon the actual area of operation which will vary according to the needs of the contractor. The gather operation includes the authorized use of low-flying aircraft to herd and capture wild horses from various portions of the Owyhee, Rock Creek and Little Humboldt Wild Horse HMAs and adjacent public and private lands outside of the established boundaries of the identified HMAs. In order to operate the aircraft in a safe and effective manner, and based on experience gained from previous gathers, it is necessary to temporarily close the affected areas (gathering and temporary holding facilities) to all public use during actual capture operations. It is anticipated that the gather operation will take approximately 15–20 days, but could last up to 26 days depending on weather, location of herds, success of capture operations, and other variable conditions. Maps of the affected area and other documents associated with this temporary closure are available at the Tuscarora Field Office, 3900 E. Idaho Street, Elko, NV 89801 and at the BLM Elko Web site at *http://www.blm.gov/nv/st/en/fo/elko_field_office.html.*

Horses will be held temporarily in holding facilities on public lands within the Owyhee, Rock Creek and Little Humboldt HMAs and on adjacent private lands until July 31, 2010, for day-to-day care, veterinary treatment, and preparation for transport to BLM adoption preparation and holding facilities in Nevada and Utah.

The temporary closures may be rescinded prior to July 31, 2010, if gather operations are successfully completed before that date. On specifically scheduled and escorted visitation days, the public and media

will be allowed to view the gather operations as well as the horses being temporarily held prior to release or being transported to BLM adoption preparation and holding facilities.

Further information may be obtained from the Owyhee, Rock Creek, and Little Humboldt Herd Management Areas Gather Plan and Environmental Assessment, DOI–BLM–NV–N020–2010–0014. The document also is available from the Field Manager, Tuscarora Field Office, 3900 E. Idaho Street, Elko, NV 89801, and is available on the BLM Elko District Web site at *http://www.blm.gov/nv/st/en/fo/elko_field_office.html.* This Notice will be posted in the local BLM office with jurisdiction over the lands to which the order applies (43 CFR 8364.1(b)(5)).

Penalties: In accordance with Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)) and 43 CFR 8360.0–7, the BLM will enforce the temporary closures on public lands in Northwestern Elko County, Nevada.

The following persons are exempt from this temporary closure: Federal, state, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the BLM.

A person who violates the above order may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months, or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Kenneth E. Miller,

District Manager, Elko.

[FR Doc. 2010–16911 Filed 7–9–10; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–244 (Third Review)]

Natural Bristle Paint Brushes From China

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject review.

DATES: *Effective Date:* June 30, 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: Effective April 15, 2010, the Commission established a schedule for the conduct of a full five-year review concerning the antidumping duty order on natural bristle paint brushes from China (75 FR 21347, April 23, 2010). On April 23, 2010, the domestic interested parties withdrew their participation in the Commission's review. On May 7, 2010, the U.S. Department of Commerce received a request for a changed circumstances review to revoke the antidumping duty order based on an expression of no interest. Commerce published its notice of initiation and preliminary results of the changed circumstances review as well as its intent to revoke the order on June 16, 2010 (75 FR 34097). In light of these developments, the Commission is revising its schedule. 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).

The Commission's new schedule for the subject review is as follows: The prehearing staff report will be placed in the nonpublic record on November 17, 2010; the deadline for filing prehearing briefs is November 24, 2010; requests to appear at the hearing must be filed with the Secretary to the Commission not later than November 26, 2010; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on December 1, 2010; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on December 2, 2010; the deadline for filing posthearing briefs is December 9, 2010; the Commission will make its final release of information on January 4, 2011; and final party comments are due on January 6, 2011.

For further information concerning this review see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: July 6, 2010.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 2010–16844 Filed 7–9–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is given that on July 1, 2010, a proposed Consent Decree in *United States* v. *City of Hastings,* Civil Action No. 8:10–CV–00247, was lodged with the United States District Court for the District of Nebraska.

This Consent Decree resolves claims of the United States against the City of Hastings under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9606 and 9607(a), for the recovery of response costs incurred and to be incurred by the United States Environmental Protection Agency ("EPA") at the Second Street Subsite ("Subsite"), one of seven subsites of the Hastings Ground Water Contamination Superfund Site located in Hastings, Nebraska. The Consent Decree requires the City of Hastings to perform response work at the Subsite and pay $1,000,000 (and accrued interest) in reimbursement of EPA's response costs.

The Department of Justice will receive written comments on the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. 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. *City of Hastings,* Civil Action No. 8:10–CV–00247 (D. Neb.), D.J. Ref. 90–11–2–09810.

The Consent Decree may be examined at the Office of the United States Attorney, District of Nebraska, 1620 Dodge Street, Suite 1400, Omaha, Nebraska, and at the United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas

City, Kansas. 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. When requesting a copy, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "U.S. Treasury" in the amount of $18.25 (for Decree without appendices) or $107.50 (for Decree with appendices), or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–16883 Filed 7–9–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Application Nos. and Proposed Exemptions; D–11489, Morgan Stanley & Co., Incorporated; L–11609, The Finishing Trades Institute of the Mid-Atlantic Region (the Plan) et al.

Correction

In notice document 2010–16096 beginning on page 38557 in the issue of Friday, July 2, 1010, make the following corrections:

1. On page 38557, in the third column, insert: "Morgan Stanley & Co. Incorporated Located in New York, New York [Application No. D–11489]" above the heading **Proposed Exemption**.

2. On page 38561, in the first column, insert: "The Finishing Trades Institute of the Mid–Atlantic Region (the Plan) Located in Philadelphia, Pennsylvania [Application No. L–11609]" above the heading **Proposed Exemption**.

[FR Doc. C1–2010–16096 Filed 7–9–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Prohibited Transaction Exemptions and Grant of Individual Exemptions Involving D–11448, The PNC Financial Services Group, Inc., 2010–19; D–11514, Citigroup Inc. and its Affiliates (Citigroup or the Applicant), 2010–20; D–11527, Barclays California Corporation (Barcal), 2010–21; D–11640 and D–11534, Respectively, CUNA Mutual Pension Plan for Represented Employees and CUNA Mutual Pension Plan for Non–Represented Employees (Together, the Plans), 2010–22

Correction

In notice document 2010–16097 beginning on page 38551 in the issue of Friday, July 2, 2010, make the following corrections:

1. On page 38551, in the third column, insert: "The PNC Financial Services Group, Inc. Located in Pittsburgh, Pennsylvania [Prohibited Transaction Exemption 2010–19; Exemption Application No. D–11448]" above the heading **Exemption**.

2. On page 38553, in the third column, insert: "Citigroup Inc. and Its Affiliates (Citigroup or the Applicant) Located in New York, New York [Prohibited Transaction Exemption 2010–20; Exemption Application No. D–11514]" above the heading **Exemption**.

3. On page 38555, in the second column, insert: "Barclays California Corporation (Barcal) Located in San Francisco, California [Prohibited Transaction Exemption 2010–21; Exemption Application No. D–11527]" above the heading **Exemption**.

4. On page 38556, in the second column, insert: "CUNA Mutual Pension Plan for Represented Employees and CUNA Mutual Pension Plan for Non-Represented Employees (together, the Plans), Located in Madison, Wisconsin [Prohibited Transaction Exemption No. 2010–22, Application Nos. D–11640 and D–11534, Respectively]" above the heading **Exemption**.

[FR Doc. C1–2010–16097 Filed 7–9–10; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0162; Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company, South Texas Project, Units 1 and 2; Exemption

1.0 Background

STP Nuclear Operating Company (STPNOC, the licensee) is the holder of Facility Operating Licenses numbered NPF–76 and NPF–80, which authorize operation of the South Texas Project (STP), Units 1 and 2, respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Matagorda County, Texas.

2.0 Request/Action

By letter dated September 21, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092720178), and supplemented by letters dated October 14, 2009 (ADAMS Accession No. ML092930172), and February 11, April 19, and May 10, 2010 (ADAMS Accession Nos. ML100490048, ML101160042, and ML101340116, respectively), the licensee requested an exemption, pursuant to § 26.9, "Specific exemptions," of Title 10 of the Code of Federal Regulations (10 CFR), from the requirements of 10 CFR 26.205(c) and (d) during declarations of severe weather conditions, such as tropical storm and hurricane force winds.

The regulations in 10 CFR 26.205(c), "Work hours scheduling," a performance-based provision, require that licensees shall schedule the work hours of individuals who are subject to this section consistent with the objective of preventing impairment from fatigue due to duration, frequency, or sequencing of successive shifts. The regulations in 10 CFR 26.205(d), "Work hour controls," specify the maximum work hour limits, the minimum break requirements and the minimum day-off requirements for covered workers (defined below).

The regulations apply to individuals designated as the "storm crew" who are sequestered on-site to perform duties identified in 10 CFR 26.4(a)(1) through (a)(5). Those duties are: (1) Operating or onsite directing of the operation of structures, systems and components (SSCs) that a risk-informed evaluation

process has shown to be significant to public health and safety; (2) performing health physics or chemistry duties required as a member of the onsite emergency response organization's minimum shift complement; (3) performing the duties of a fire brigade member who is responsible for understanding the effects of fire and fire suppressants on safe shutdown capability; (4) performing maintenance or onsite directing of the maintenance of SSCs that a risk-informed evaluation process has shown to be significant to public health and safety; and (5) performing security duties as an armed security force officer, alarm station operator, response team leader, or watchperson [security personnel].

The storm crew members perform these duties and are designated as covered workers.

The licensee's request states that adherence to all work hour controls could impede the licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status. The licensee requests exemption from the requirements of 10 CFR 26.205(c) and (d) during declaration of severe weather conditions associated with tropical storms and hurricane force winds. The exemption would allow the storm crew to sequester on-site, as travel to and from the site during high-wind conditions may be hazardous or not possible.

According to the National Weather Service's Tropical Cyclone Classification, a sustained wind speed of 40 miles per hour (mph) makes travel unsafe for the common traveler (National Weather Service Glossary). If conditions worsen such that sustained winds of 73 mph are present on-site, then an unusual event will be declared. When an unusual event is declared, the licensee will shutdown the plant, and the exception under current regulations at 10 CFR 26.207(d), "Plant Emergencies," will allow the licensee not to meet the requirements of 10 CFR 26.205(c) and (d), from the time that the storm or hurricane sequestering conditions are met until severe weather exit conditions are sustained. The exemption will only apply to individuals in the storm crew who perform duties identified in 10 CFR 26.4(a)(1) through (5).

The requested exemption is needed during initiation of high-wind conditions, and will continue after the exception under a declared emergency pursuant to current regulation at 10 CFR 10 CFR 26.207(d) has ended. The exemption will terminate upon declaration of the Emergency Operations Facility Director that sufficient personnel are able to return to the site to make the reconstitution of work hour control possible. When storm crew sequestering exit conditions are met, full compliance with 10 CFR 26.205(c) and (d) is again required.

3.0 Discussion

The Nuclear Regulatory Commission, pursuant to 10 CFR 26.9, requires that upon application of any interested person or on its own initiative, Commission may grant such exemptions from the requirements of the regulations at 10 CFR 26.205(c) and (d), as "it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest."

The NRC staff has reviewed the licensee's request using the regulations contained in 10 CFR 26.205 and 10 CFR 26.207 and related Statements of Consideration in the 10 CFR part 26 final rule published in the **Federal Register** on March 31, 2008 (73 FR 17148). Other references include:

- NUREG–0654, "Criteria for Preparation of and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants;"
- NRC Regulatory Guide 5.73, "Fatigue Management for Nuclear Power Plant Personnel," dated March 2009 (ADAMS Accession No. ML083450028);
- NRC Information Notice 93–53, "Effect of Hurricane Andrew on Turkey Point Nuclear Generating Station and Lessons Learned," dated July 20, 1993 (ADAMS Accession No. ML031070364);
- NRC Information Notice 93–53, Supplement 1, "Effect of Hurricane Andrew on Turkey Point Nuclear Generating Station and Lessons Learned," dated April 29, 2004 (ADAMS Accession No. ML031070490);
- NUREG–0933, "Resolution of Generic Safety Issues, Section 3, 'New Generic Issues: Issue 178: Effect of Hurricane Andrew on Turkey Point (Revision 2)'"; and
- NUREG–1474, "Effect of Hurricane Andrew on the Turkey Point Nuclear Generating Station from August 20–30, 1992," produced jointly by the NRC and the Institute of Nuclear Power Operations (non-publicly available).

Based on its review, the NRC staff agrees that preparing the site for the onset of tropical storms and hurricanes, which includes sequestering enough essential personnel to provide for shift relief, is necessary to ensure adequate protection of the plant and personnel safety, would maintain protection of health and safety of the public, and would not adversely affect the common defense and security.

Under 10 CFR 26.207(d), licensees need not meet the requirements of 10 CFR 26.205(c) and (d) during declared emergencies (unusual event) as defined in the licensee's emergency plan. The STPNOC's exemption request states that during the period that STPNOC requested to be exempt from 10 CFR 26.205(c) and (d), STPNOC may meet the conditions for entering the emergency plan. Since 10 CFR 26.207(d) states that the licensees need not meet the requirements of 10 CFR 26.205(c) and (d) during the declared emergencies, there is no need for an exemption for members of the storm crew during the period of a declared emergency.

Therefore, STPNOC's exemption request can be characterized as having three parts: (1) High-wind exemption encompassing the period starting with the initiating conditions to just prior to declaration of an unusual event; (2) a period defined as immediately following high-wind condition, when an unusual event is not declared, but when a recovery period is still required; and (3) a recovery exemption immediately following an existing 10 CFR 26.207(d) exception as discussed above.

High-Wind Exemption

A high-wind exemption encompasses the period starting with the initiating conditions (see list below) to just prior to the declaration of an unusual event (sustained winds of 73 mph are present onsite). As a tropical storm or hurricane approaches landfall, high wind speeds—in excess of wind speeds that create unsafe travel conditions—are expected. During these times, the National Weather Service typically publishes a projected path of the storm. This condition will be described as the "high-wind condition" or "period of high winds," (National Weather Service's Tropical Cyclone Classification).

For the purposes of this exemption, declaration of the entry condition allows any onsite individual who performs duties identified in 10 CFR 26.4(a)(1) through (a)(5) to not have to meet the requirements of 10 CFR 26.205(c) and (d) if they are designated as part of the storm crew. This entry condition occurs when:

- The site enters the STP Hurricane Plan.
- The Emergency Operations Facility (EOF) Director determines that travel conditions to the site will potentially become hazardous such that storm crew staffing will be required based on verifiable weather conditions (STP

procedure 0PGP03–ZV–0002, Rev. 4, "Hurricane Plan").

• Verifiable weather conditions are defined as when the site is located within the National Hurricane Center 5-day cone of probability for predicted winds of Tropical Storm or Hurricane force impact.

Lessons learned that are included in NUREG–1474, "Effect of Hurricane Andrew on the Turkey Point Nuclear Generating Station from August 20–30, 1992," include the acknowledgement that detailed, methodical preparations should be made prior to the onset of hurricane force winds. The NRC staff concludes that STP's proceduralized actions are consistent with the lessons learned.

Recovery Exemption Immediately Following a High-Wind Exemption

The period defined as after the high-wind exemption, possibly several days, when an unusual event was not declared, but a recovery period is still necessary, as high winds exist that make travel unsafe. Also, after the high-wind condition has passed, sufficient numbers of personnel may not able to access the site to relieve the sequestered storm crew. An exemption during these conditions is consistent with the intent of the 10 CFR 26.207(d) exception.

Recovery Exemption Immediately Following an Emergency Plan Exception

Following a declared emergency under 10 CFR 26.207(d), due to high wind conditions, and once the high wind conditions have passed and the unusual event exited, the site may not be accessible by sufficient numbers of personnel to allow relief of the sequestered storm crew. During these conditions, an exemption is consistent with the intent of 10 CFR 26.207(d).

Once STPNOC has entered into high-wind exemption or 10 CFR 26.207(d) exception, the licensee would not need to make a declaration that it is invoking the recovery exemption.

Unit Shutdown

The STP exemption request states that following the declaration of an unusual event resulting from predicted natural phenomenon, the units are required to be shut down to hot standby at least 2 hours prior to hurricane force winds arriving on-site. Lessons learned from Hurricane Andrew, NUREG–1474, include having both units shut down and on residual heat removal when the storm strikes so that a loss-of-offsite power will not jeopardize core cooling. The NRC staff concludes that the STP plan is consistent with the lessons learned.

Storm Crew

STPNOC plans to sequester sufficient individuals to staff two 12-hour shifts of workers consisting of personnel from operations, maintenance, health physics, chemistry and security to maintain the safe and secure operation of the facility. The STPNOC'S hurricane plan provides for bunking facilities in the power block that allows for restorative rest for the off-crew. This plan is consistent with managing fatigue. A 12-hour break provides each individual with an opportunity for restorative rest. However, the accommodations and potentially stressful circumstances may not be as restful as individuals would otherwise desire. The NRC staff concludes that, under the circumstances, these actions are consistent with the expected practice of fatigue management.

Maintenance

The NRC staff does not consider discretionary maintenance to be maintenance of SSCs that is required as a result of the storm's high winds or required Technical Specification surveillances. In its letter dated April 19, 2010, the licensee clarified that the exemption request is not intended for performing discretionary maintenance or the direction of discretionary maintenance. The exemption is for specific work necessary to maintain the plant in a safe and secure condition, or to protect equipment required for safety or power generation from potential storm damage. The NRC staff concludes that this definition of discretionary maintenance and the exclusion of discretionary maintenance from the exemption request is consistent with the intent of this exemption.

Procedural Guidance

In its letter dated May 10, 2010, in response to a phone call on May 6, 2010, the licensee made a commitment to incorporate the following guidance in site procedures:

• The conditions necessary to sequester site personnel are consistent with the conditions specified in the STPNOC exemption request,

• Provisions for ensuring that personnel who are not performing duties are provided an opportunity as well as accommodations for restorative rest, and

• The condition for departure from the exemption is based on the EOF Director's determination that adequate staffing is available to meet the requirements of 10 CFR 26.205(c) and (d).

Returning to Work Hour Controls

The licensee must return to work hour controls when the EOF Director determines that adequate staff is available to meet the 10 CFR 26.205(c) and (d) requirements.

Upon exiting the exemption, all work hour controls will apply. The individuals must have had a minimum of a 10-hour break prior to the start of the first shift following exiting the exemption. The minimum day-off requirement (10 CFR 26.205(d)(3)) is considered reset and the forward shift schedules must be designed to meet the minimum day-off requirements.

Authorized by Law

As stated above, this exemption would apply to the storm crew sequestered on site. The licensee's request states that adherence to all work hour controls could impede the licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status. As stated above, 10 CFR 26.9 allows the NRC to grant exemptions from the requirements of 10 CFR 26.205(c) and (d). The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

No Undue Risk to Public Health and Safety

The underlying purposes of 10 CFR 26.205(c) and (d) are to prevent impairment from fatigue due to duration, frequency, or sequencing of successive shifts. Based on the above evaluation, no new accident precursors are created by utilizing whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status; therefore, the probability of postulated accidents is not increased. Also, the consequences of postulated accidents are not increased, because there is no change in the types of accidents previously evaluated. Therefore, there is no undue risk to public health and safety.

Consistent With Common Defense and Security

The proposed exemption would allow the licensee to utilize whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status. This change to the operation of the plant has no relation to security issues. Therefore, the common defense and

security is not impacted by this exemption.

4.0 Conclusion

Accordingly, the Commission concludes that granting the requested exemption is consistent with existing regulation at 10 CFR 26.207(d), "Plant emergencies," which allows the licensee to not meet the requirements of 10 CFR 26.205(c) and (d) during declared emergencies as defined in the licensee's emergency plan. The 10 CFR Part 26 Statements of Consideration (73 FR 17148; March 31, 2008), state that "Plant emergencies are extraordinary circumstances that may be most effectively addressed through staff augmentation that can only be practically achieved through the use of work hours in excess of the limits of § 26.205(c) and (d)." The objective of the exemption is to ensure that the control of work hours do not impede a licensee's ability to use whatever staff resources may be necessary to respond to a plant emergency and ensure that the plant maintains a safe and secure status.

The actions described in the exemption request and "Hurricane Plan" procedure are consistent with the recommendations in NUREG–1474, "Effect of Hurricane Andrew on the Turkey Point Nuclear Generating Station from August 20–30, 1992." Also consistent with NUREG–1474, NRC staff expects the licensee would have completed a reasonable amount of hurricane preparation prior to the need to sequester personnel, in order to minimize personnel exposure to high winds.

The NRC staff has determined that: (1) The proposed exemption is authorized by law;(2) there is a reasonable assurance that the health and safety of the public will not be endangered by the proposed exemption; (3) such activities will be consistent with the Commission's regulations and guidance; and (4) the issuance of the exemption will not endanger the common defense and security.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment (75 FR 21678; April 26, 2010).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of July 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–16878 Filed 7–9–10; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. MC2010–25; Order No. 483]

Postal Classification Change

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently–filed Postal Service request concerning two classification changes to Address Management Services. This notice addresses procedural steps associated with these filings.

DATES: Comments are due: July 13, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov.* or 202–789–6820.

SUPPLEMENTARY INFORMATION: On July 2, 2010, the Postal Service filed a notice pursuant to 39 CFR 3020.90 and 3020.91 concerning two classification changes to Address Management Services.[1]

The first change removes "Delivery Type" service from the list of services included within Address Management Services. The Postal Service states that this service is limited, outdated, not widely used, and the information obtained through this service may be obtained through other services. *Id.* at 1.

Rule 3020.91 requires that the Postal Service file a notice of proposed change no later than 15 days prior to the effective date of the change. The Postal Service intends to offer Delivery Type service subscriptions through September 30, 2010, and honor subscriptions until they expire. *Id.*

The second change removes the specifications as to how information is provided to customers for CRIS Route, City State, Delivery Statistics, eLOT, 5–Digit ZIP, Official National Zone Charge, Z4 Change, ZIP+4, ZIP Move, AMS API, and TIGER ZIP+4 services. Currently, CD–ROM, DVD, and disc are specified. *Id.* at 2. The Postal Service states that removing the specifications will allow it to provide information by any appropriate means. *Id.*

The Commission establishes Docket No. MC2010–25 for consideration of matters related to the Address Management Services classification changes identified in the Postal Service's Notice.

Interested persons may submit comments on the changes proposed within the Postal Service's Notice. Comments are due no later than July 13, 2010. The Postal Service's Request can be accessed via the Commission's Web site (*http://www.prc.gov*). Proposed edits to the draft Mail Classification Schedule are attached to the Postal Service's Notice.

The Commission appoints Emmett Rand Costich to serve as Public Representative in the captioned proceedings.

It is ordered:

1. The Commission establishes Docket No. MC2010–25 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than July 13, 2010.

3. Pursuant to 39 U.S.C. 505, Emmett Rand Costich is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–16868 Filed 7–9–10; 8:45 am]

BILLING CODE 7710–FW–S

SECURITIES AND EXCHANGE COMMISSION

[Rule 303, SEC File No. 270–450, OMB Control No. 3235–0505]

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:

Rule 303, SEC File No. 270–450, OMB Control No. 3235–0505.

[1] Notice of the United States Postal Service of Classification Changes Related to Address Management Services, July 2, 2010 (Notice).

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 existing collection of information provided for in Rule 303 (17 CFR 242.303) of Regulation ATS (17 CFR 242.300 *et seq.*) under the Securities and Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation ATS sets forth a regulatory regime for "alternative trading systems" ("ATSs"), which are entities that carry out exchange functions but which are not required to register as national securities exchanges under the Act. In lieu of exchange registration, an ATS can instead opt to register with the Commission as a broker-dealer and, as a condition to not having to register as an exchange, must instead comply with Regulation ATS. Rule 303 of Regulation ATS (17 CFR 242.303) describes the record preservation requirements for ATSs. Rule 303 also describes how such records must be maintained, what entities may perform this function, and how long records must be preserved.

Under Rule 303, ATSs are required to preserve all records made pursuant to Rule 302, which includes information relating to subscribers, trading summaries, and time-sequenced order information. Rule 303 also requires ATSs to preserve any notices provided to subscribers, including, but not limited to, notices regarding the ATSs operations and subscriber access. For an ATS subject to the fair access requirements described in Rule 301(b)(5)(ii) of Regulation ATS, Rule 303 further requires the ATS to preserve at least one copy of its standards for access to trading, all documents relevant to the ATS's decision to grant, deny, or limit access to any person, and all other documents made or received by the ATS in the course of complying with Rule 301(b)(5) of Regulation ATS. For an ATS subject to the capacity, integrity, and security requirements for automated systems under Rule 301(b)(6) of Regulation ATS, Rule 303 requires an ATS to preserve all documents made or received by the ATS related to its compliance, including all correspondence, memoranda, papers, books, notices, accounts, reports, test scripts, test results, and other similar records. As provided in Rule 303(a)(1), ATSs are required to keep all of these records, as applicable, for a period of at least three years, the first two in an easily accessible place. In addition, Rule 303 requires ATSs to preserve records of partnership articles, articles of incorporation or charter, minute books, stock certificate books, copies of reports filed pursuant to Rule 301(b)(2), and records made pursuant to Rule 301(b)(5) for the life of the ATS.

The information contained in the records required to be preserved by Rule 303 will be used by examiners and other representatives of the Commission, State securities regulatory authorities, and the self-regulatory organizations to ensure that ATSs are in compliance with Regulation ATS as well as other applicable rules and regulations. Without the data required by the Rule, regulators would be limited in their ability to comply with their statutory obligations, provide for the protection of investors, and promote the maintenance of fair and orderly markets.

Respondents consist of ATSs that choose to register as broker-dealers and comply with the requirements of Regulation ATS. There are currently 81 respondents. To comply with the record preservation requirements of Rule 303, these respondents will spend approximately 1,215 hours per year (81 respondents at 15 burden hours/respondent). At an average cost per burden hour of $106, the resultant total related cost of compliance for these respondents is $128,790 per year (1,215 burden hours multiplied by $106/hour).

Written comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 29, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–16841 Filed 7–9–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, July 15, 2010 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, July 15, 2010 will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Consideration of amicus participation; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 8, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–17057 Filed 7–8–10; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62450; File No. SR–NYSEArca–2010–66]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To Expand Its $1 Strike Program

July 2, 2010.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on July 2, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.4 Commentary .04 to expand the Exchange's $1 Strike Price Program (the "$1 Strike Program" or "Program") to allow the Exchange to select 150 individual stocks on which options may be listed at $1 strike price intervals. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov*, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to expand the $1 Strike Program.[3]

The $1 Strike Program currently allows NYSE Arca to select a total of 55 individual stocks on which option series may be listed at $1 strike price intervals. In order to be eligible for selection into the Program, the underlying stock must close below $50 in its primary market on the previous trading day. If selected for the Program, the Exchange may list strike prices at $1 intervals from $1 to $50, but no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day. The Exchange may also list $1 strikes on any other option class designated by another securities exchange that employs a similar Program under their respective rules. The Exchange may not list long-term option series ("LEAPS") [4] at $1 strike price intervals for any class selected for the Program, except as specified in subparagraph (c) to Commentary .04 to Rule 6.4.[5] The Exchange is also restricted from listing series with $1 intervals within $0.50 of an existing strike price in the same series, except that strike prices of $2, $3, and $4 shall be permitted within $0.50 of an existing strike price for classes also selected to participate in the $0.50 Strike Program.[6]

The Exchange now proposes to expand the Program to allow NYSE Arca to select a total of 150 individual stocks on which option series may be listed at $1 strike price intervals. The existing restrictions on listing $1 strikes would continue, i.e., no $1 strike price may be listed that is greater than $5 from the underlying stock's closing price in its primary market on the previous day, and NYSE Arca is restricted from listing any series that would result in strike prices being $0.50 apart (unless an option class is selected to participate in both the $1 Strike Program and the $0.50 Strike Program).

As stated in the Commission order that initially approved NYSE Arca's Program and in subsequent extensions and expansions of the Program,[7] NYSE Arca believes that $1 strike price intervals provide investors with greater flexibility in the trading of equity options that overlie lower price stocks by allowing investors to establish equity options positions that are better tailored to meet their investment objectives.

During the time that the $1 Strike Program was a pilot, the Exchange submitted three pilot reports to the Commission in which the Exchange discussed, among other things, the strength and efficacy of the Program based upon the steady increase in volume and open interest of options traded on the Exchange at $ 1 strike price intervals; and that the Program had not and, in the future, should not create capacity problems for NYSE Arca or the Options Price Reporting Authority ("OPRA") systems.[8] This has not changed. Moreover, the number of $1 strike options traded on the Exchange has continued to increase since the inception of the Program such that these options are now among some

[3] The Commission approved the Pilot Program on June 17, 2003. *See* Securities Exchange Act Release No. 48045 (June 17, 2003) 68 FR 37594 (June 24, 2003). The Pilot Program was subsequently extended. *See* Securities Exchange Act Release No. 49818 (June 4, 2004), 69 FR 33440 (June 15, 2004) (extending the Pilot Program until August 4, 2004); Securities Exchange Act Release No. 50152 (August 5, 2004), 69 FR 49931 (August 12, 2004) (extending the Pilot Program until June 5, 2005); Securities Exchange Act Release No. 51767 (May 31, 2005), 70 FR 33244 (June 7, 2005) (extending the Pilot Program until June 5, 2006); Securities Exchange Act Release No. 53807 (May 15, 2006), 71 FR 29373 (May 22, 2006) (extending the Pilot Program until June 5, 2007); Securities Exchange Act Release No. 55718 (May 7, 2007), 72 FR 27346 (May 15, 2007) (extending the Pilot Program until June 5, 2008). The Program was subsequently expanded and permanently approved in 2008. *See* Exchange Act Release 57130 (January 10, 2008) 73 FR 3302 (January 17, 2008) The Program was last expanded in 2009. *See* Exchange Act Release No. 59587 (March 17, 2009) 74 FR 12414 (March 24, 2009).

[4] LEAPS are long-term options that generally have up to thirty-nine months from the time they are listed until expiration. *See* Rule 6.4(e) Long-Term Equity Option Series (LEAPS®).

[5] Commentary .04(c) states that the Exchange may list $1 strike prices up to $5 in LEAPS in up to 200 option classes in individual stocks. *See* Securities Exchange Act Release No. 61035 (November 19, 2009).

[6] Regarding the $0.50 Strike Program, which allows $0.50 strike price intervals for options on stocks trading at or below $3.00, *see* Commentary .04 to Rule 6.4 and Securities Exchange Act Release No. 60721 (September 25, 2009), 74 FR 50858 (October 1, 2009). *See also* Securities Exchange Act Release No. 61920 (April 15, 2010), 75 FR 21092 (April 22, 2010) (allowing concurrent listing of $3.50 and $4 strikes for classes that participate in both the $0.50 Strike Program and the $1 Strike Program).

[7] *See supra* Note 1.

[8] *See* Securities Exchange Act Release No. 49818 (June 4, 2004), 69 FR 33440 (June 15, 2004); Securities Exchange Act Release No. 50152 (August 5, 2004), 69 FR 49931 (August 12, 2004); Securities Exchange Act Release No. 51767 (May 31, 2005), 70 FR 33244 (June 7, 2005); Securities Exchange Act Release No. 53807 (May 15, 2006), 71 FR 29373 (May 22, 2006); Securities Exchange Act Release No. 55718 (May 7, 2007), 72 FR 27346 (May 15, 2007).

of the most popular products traded on the Exchange.

The Exchange believes that market conditions have led to an increase in the number of securities trading below $50 warranting the proposed expansion of the $1 Strike Program.[9] In addition, the Exchange notes that this filing is based on a filing previously submitted by NASDAQ OMX PHLX, Inc ("PHLX") that the Commission recently noticed.[10] With regard to previous expansions of the Program, the Commission has approved proposals from the options exchanges that employ a $1 Strike Program in lockstep.

The Exchange notes that, in addition to options classes that are trading pursuant to the $1 strike programs of options exchanges, there are also options trading at $1 strike intervals on the Exchange on over 170 exchange-traded fund shares ("ETFs") and exchange-traded notes (ETNs"),[11] ETF and ETN options trading at $1 intervals have not, however, negatively impacted the system capacity of the Exchange or OPRA.

With regard to the impact of this proposal on system capacity, NYSE Arca has analyzed its capacity and represents that it and OPRA have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of an expanded number of series in the $1 Strike Program.

The Exchange believes that the $1 Strike Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions to the movement of the underlying security. Furthermore, the Exchange has not detected any material proliferation of illiquid options series resulting from the narrower strike price intervals. For these reasons, the Exchange requests an expansion of the current Program and the opportunity to provide investors with additional strikes for investment, trading, and risk management purposes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b)[12] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of section 6(b)(5)[13] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that expanding the current $1 Strike Program will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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[14] and Rule 19b–4(f)(6) thereunder.[15]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[16] Therefore, the Commission designates the proposal operative upon filing.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–66 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–2010–66. 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.,

[9] *See e.g.,* Exchange Act Release No. 59587 (March 17, 2009) 74 FR 12414 (March 24, 2009) (SR–NYSEArca–2009–10) (more than five-fold increase in the number of individual stocks on which options may be listed at $1 intervals).

[10] *See* Securities Exchange Act Release No. 62151 (May 21, 2010), 75 FR 30078 (May 28, 2010) (SR–Phlx–2010–72).

[11] *See* Commentary .05 to Rule 6.4 allowing $1 strike price intervals for ETF and ETN options where the strike price is $200 or less.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] *See* Securities Exchange Act Release No. 62420 (June 30, 2010) (SR–Phlx–2010–72) (order approving expansion of $1 strike program to 150 classes).

[17] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–66 and should be submitted on or before August 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–16850 Filed 7–9–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62433; File No. SR–NYSEArca–2010–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Change by NYSE Arca, Inc. Amending Its Fee Schedule

July 1, 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 June 24, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services (the "Schedule"). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on July 1, 2010. The amended section of the Schedule is included as Exhibit 5 hereto. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.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 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

Effective July 1, 2010, NYSE Arca proposes to set volume requirements for both Tier 1 and Tier 2 based on average U.S. consolidated daily volumes. Volume requirements to reach the tiered pricing levels will adjust each calendar month based on U.S. average daily consolidated share volume in Tape A, Tape B, Tape C securities ("U.S. ADV") for that given month. U.S. ADV is equal to the volume reported by all exchanges and trade reporting facilities to the Consolidated Tape Association ("CTA") Plan for Tapes A, B and C [sic] securities.

Tier 1: Currently, Tier 1 pricing is applied to customers with an average daily volume in shares per month of greater than 55 million shares that add liquidity in Tape A, Tape B, and Tape C securities combined. Starting July 1, the monthly requirement will be based on U.S. ADV for that given month as follows:

—When U.S. ADV is 8 billion shares or less, the requirement for adding liquidity will be 50 million shares average daily volume in Tape A, Tape B, and Tape C combined.

—When U.S. ADV is greater than 8 billion up to 10 billion shares, the requirement for adding liquidity will [sic] 55 million shares average daily volume in Tape A, Tape B, and Tape C combined.

—When U.S. ADV is greater than 10 billion up to 11 billion shares, the requirement for adding liquidity will [sic] 65 million shares average daily volume in Tape A, Tape B, and Tape C combined.

—When U.S. ADV is greater than 11 billion up to 12 billion shares, the requirement for adding liquidity will [sic] 75 million shares average daily volume in Tape A, Tape B, and Tape C combined.

—When U.S. ADV is greater than 12 billion up to 13 billion shares, the requirement for adding liquidity will [sic] 85 million shares average daily volume in Tape A, Tape B, and Tape C combined.

—When U.S. ADV is greater than 13 billion shares, the requirement for adding liquidity will [sic] 95 million shares average daily volume in Tape A, Tape B, and Tape C combined.

Tier 2: Currently, Tier 2 pricing is applied to customers with an average daily volume in shares per month of greater than 25 million shares that add liquidity in Tape A, Tape B, and Tape C securities combined. Starting July 1, the monthly requirement will be based on U.S. ADV for that given month as follows:

—When U.S. ADV is 8 billion shares or less, the requirement for adding liquidity will be 20 million shares average daily volume in Tape A, Tape B, and Tape C combined.

—When U.S. ADV is greater than 8 billion up to 10 billion shares, the requirement for adding liquidity will [sic] 25 million shares average daily volume in Tape A, Tape B, and Tape C combined.

—When U.S. ADV is greater than 10 billion up to 11 billion shares, the requirement for adding liquidity will [sic] 30 million shares average daily volume in Tape A, Tape B, and Tape C combined.

—When U.S. ADV is greater than 11 billion up to 12 billion shares, the requirement for adding liquidity will [sic] 35 million shares average daily volume in Tape A, Tape B, and Tape C combined.

—When U.S. ADV is greater than 12 billion up to 13 billion shares, the requirement for adding liquidity will [sic] 40 million shares average daily volume in Tape A, Tape B, and Tape C combined.

—When U.S. ADV is greater than 13 billion shares, the requirement for adding liquidity will [sic] 45 million shares average daily volume in Tape A, Tape B, and Tape C combined.

Transactions that are not reported to the Consolidated Tape, such as odd-lots and Crossing Session 2 transactions, are not included in U.S. ADV. The Exchange will make this data publically [sic] available on a T + 1 basis from a link at *http://www.nyxdata.com.*

The Exchange believes the proposed changes to the tiers are equitable in that

[18] 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.

they apply uniformly to all ETP Holders. The proposed changes will become operative on July 1, 2010.

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 proposed changes to the Schedule are reasonable and equitable in that they apply uniformly to all ETP Holders.

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 by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–62 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–62. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room 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–NYSEArca–2010–62, and should be submitted on or before August 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–16852 Filed 7–9–10; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[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] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62454; File No. SR–FINRA–2010–030]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Adopt FINRA Rule 11000 Series (Uniform Practice Code) in the Consolidated FINRA Rulebook

July 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 June 14, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ["NASD"]) 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 primarily by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

FINRA is proposing to adopt the NASD Rule 11000 Series (Uniform Practice Code ["UPC"]) as FINRA rules in the consolidated FINRA rulebook, subject to certain amendments, and to delete NASD Rule 3370 (Purchases) and the following corresponding provisions in the Incorporated NYSE Rules and Interpretations: 176 (Delivery Time), 180 (Failure to Deliver), 282 (Buy-in Procedures) and its Supplementary Material paragraphs .10–.80, 291 (Failure to Fulfill Closing Contract), 292 (Restrictions on Members' Participation in Transaction to Close Defaulted Contracts), 293 (Closing Contracts in Suspended Securities), 294 (Default in Loan of Money), 387 (COD Orders) and its Supplementary Material paragraphs .10–.60, Rule 387 Interpretations/01–/18, 430 (Partial Delivery of Securities to Customers on C.O.D. Purchases), and Rule 430 Interpretation/01.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org.*

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As part of the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook"),[5] FINRA is proposing to adopt the NASD Rule 11000 Series (Uniform Practice Code ["UPC"]) into the Consolidated FINRA Rulebook, subject to certain amendments described below. The UPC was originally adopted on January 20, 1941, and became effective on August 1, 1941. The UPC prescribes the manner in which over-the-counter securities transactions other than those cleared through a registered clearing agency are compared, cleared, and settled between member firms.

As a general matter, the UPC does not apply to:

a. Transactions in securities between members that are compared, cleared, or settled through the facilities of a registered clearing agency;

b. Transactions in securities exempted under Section 3(a)(12) of the Act or municipal securities as defined in Section 3(a)(29) of the Act;

c. Transactions in redeemable securities issued by companies registered under the Investment Company Act of 1940; or

d. Transactions in Direct Participation Program securities.

The UPC is designed to make uniform, where practicable, custom, practice, usage, and trading technique in the investment banking and securities business, particularly with respect to operational and settlement issues. This can include such matters as trade terms, deliveries, payments, dividends, rights, interest, stamp taxes, claims, assignments, powers of substitution, due-bills, transfer fees, and marking to the market. The UPC, among other things, was created so that the transaction of day-to-day business by members may be simplified and facilitated.

1. UPC Rules Generally

FINRA is proposing to transfer a significant portion of the NASD Rule 11000 Series into the Consolidated FINRA Rulebook with the minor changes detailed below.[6] Specifically, FINRA is proposing to update certain terminology in the UPC. For example, NASD Rule 11120 defines the term "written notice" as used in the UPC to include a notice delivered by hand, letter, teletype, telegraph, TWX, facsimile transmission, or other comparable media. FINRA is proposing to delete the references to teletype, telegraph, and TWX and to include notice delivered by electronic mail. In addition, FINRA is proposing to update cross-references throughout the rules and to make other minor changes primarily to reflect the new conventions of the Consolidated FINRA Rulebook.

2. Proposed FINRA Rules 11111 (Refusal To Abide by Rulings of the Committee) and 11112 (Review by Panels of the UPC Committee)

FINRA is proposing to adopt two new provisions that are largely based on former NASD IM–11890–1 (Refusal To Abide by Rulings) and NASD IM–11890–2 (Review by Panels of the UPC Committee).[7] FINRA is proposing that the provisions of former NASD IM–11890–1 be incorporated into and merged with current NASD IM–11110 (Refusal To Abide by Rulings of the Committee) into proposed new FINRA Rule 11111, as the two provisions are largely identical. Former NASD IM–11890–1 provided that a refusal by a member to take action necessary to effectuate a final decision of a FINRA officer or the UPC Committee under NASD Rule 11890 (Clearly Erroneous Transactions) would be considered conduct inconsistent with just and equitable principles of trade. Current NASD IM–11110 provides that a refusal by a member to abide by an official ruling of the UPC Committee, acting within its appropriate sphere, shall be considered conduct inconsistent with just and equitable principles of trade. Proposed FINRA Rule 11111 would merge the two provisions by providing that a refusal by a member to take action necessary to effectuate a final decision of a FINRA officer or the UPC Committee under the UPC Code (FINRA Rule 11000 Series) or other FINRA rules that permit review of FINRA decisions by the UPC Committee would be considered conduct inconsistent with just and equitable principles of trade.

FINRA is also proposing that the provisions of former NASD IM–11890–2, which applied only to rulings under NASD Rule 11890, be adopted as proposed new FINRA Rule 11112 (Review by Panels of the UPC Committee) and be generally applicable to all rulings by the UPC Committee. Proposed FINRA Rule 11112 would provide that a decision of the UPC Committee may be rendered by a panel of the Committee, which shall consist of three or more members of the UPC Committee, provided no more than 50 percent of the members of any panel are directly engaged in market making activity or employed by a firm whose revenues from market making activity exceed ten percent of its total revenues.

3. Proposed FINRA Rules 11810 (Buying-In) and 11810.03 (Sample Buy-In Forms)

FINRA is proposing that NASD Rule 11810 (Buying-In) be adopted as FINRA Rule 11810 (Buy-In Procedures and Requirements) in the Consolidated FINRA Rulebook with certain clarifications and changes and that Incorporated NYSE Rules 282 (Buy-in Procedures) and related Supplementary Material paragraphs .10–.80 be deleted. The proposed changes are intended to harmonize the differences between the NYSE rule and the NASD rule and to update certain procedures and time frames. FINRA is also proposing to adopt NASD IM–11810, which contains the sample buy-in forms, into the Consolidated FINRA Rulebook as accompanying Supplementary Material .03 to FINRA Rule 11810 with minor changes to replace references to NASD with FINRA.

Proposed FINRA Rule 11810 would continue to set forth the required steps that members must follow to effect the "buy-in" of securities including the procedures to be followed in issuing a "buy-in" notice, the contents of such notice, the expectations of the receiving

[4] Some of the text of the summaries prepared by FINRA may have been modified by the Commission.

[5] The current FINRA rulebook consists of (1) FINRA Rules, (2) NASD Rules, and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, see *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[6] NASD Rules 11890 (Clearly Erroneous Transactions), IM–11890–1 (Refusal To Abide by Rulings), and IM–11890–2 (Review by Panels of the UPC Committee) were adopted, with significant changes, into the Consolidated FINRA Rulebook as the FINRA Rule 11890 Series (Clearly Erroneous Transactions) pursuant to a separate rule filing and are not being addressed as part of this rule filing. Securities Exchange Act Release No. 61080 (Dec. 1, 2009), 74 FR 64117 (Dec. 7, 2009) (SR–FINRA–2009–068).

[7] *Id.*

party to respond to such notice, and the time frames in which a "buy-in" may be issued, retransmitted, and effected.

FINRA is proposing to make certain minor clarifications and to add the following more substantive provisions to proposed FINRA Rule 11810, which are contained in NYSE Rule 282 either with or without modifications, as specified:

a. Include as proposed paragraph (a) a statement clarifying that the rule does not apply to, among other things, securities contracts that are subject to the requirements of a national securities exchange or a registered clearing agency.

b. Amend certain time frames for action specified in the proposed rule:

i. Clarify the time frames within which members must take action to effect the "buy-in" of securities as required therein. Specifically, the NASD rule requires that a member act within the specified *local* time at the member's location, whereas the NYSE rule requires action to be taken based on Eastern Time (ET). To promote operational consistency among members, the proposal would amend the required time frame for action to be ET.

ii. Amend the current time frame specified by the NASD and NYSE rules for the acknowledgement of a "buy-in" notice and the notification of an execution of the buy-in from 5 p.m. to 6 p.m. ET. FINRA understands that the 5 p.m. time may be operationally difficult for members to achieve in some cases and the 6 p.m. ET time frame would be more operationally feasible.

iii. Add Supplementary Material .01 (Early Closure of Markets) to clarify that in the event of an announced early closure of the market upon which the security subject to the "buy-in" notice is traded, members may take the action required by the proposed rule not earlier than one hour prior to the announced early closure of such market.

c. Add new paragraph (b)(4) (Notice of "Buy-In" and Confirmation of Receipt) to specify that (1) the buyer must maintain as part of its records, confirmation of receipt of the notice by the seller and (2) if the seller does not accept the notice of "buy-in," it must reject it by response to the buyer no later than 6 p.m. ET on the same date that it receives such notice, and in the absence of doing so, the seller will have been deemed by the buyer to have accepted such notice. The proposed provision would clarify that the seller, in such case, would have the right to request proof of the fail obligation from the buyer, which the buyer must deliver to the seller prior to the effective date of the "buy-in." However, in no event would a buyer be entitled to a "buy-in" that exceeds the liability of a seller under an unsettled securities contract because of the failure of the seller to reject a "buy-in" notice as provided in the rule, and a buyer may not execute a "buy-in" notice to such extent the buyer fails to deliver the proof of fail obligation in accordance with the requirements of the rule. Requirements (1) and (2) described above are contained in the NYSE rule, in a similar form, except FINRA is proposing to change the time to 6 p.m. ET. FINRA is also proposing to add new provisions regarding "passive acceptance" of the "buy-in" by the seller as described above, subject to certain safeguards for the benefit of the seller such as requiring the buyer to provide the proof of fail obligation and "buying-in" the seller only for the securities contract amount in accordance with the proposed rule.

d. Add new paragraph (b)(5) (Notice of "Buy-In" and Confirmation of Receipt) to specify that the receiving party shall immediately retransmit a notice of "buy-in" to other parties from which the securities may be due in the form of a retransmitted "buy-in" notice. Consistent with proposed paragraph (b)(4) described above, the provision would clarify that each party receiving a retransmitted "buy-in" notice will be required to maintain confirmation of receipt of the notice as part of its books and records and either reject a retransmitted "buy-in" notice that it has received by 6 p.m. ET on the date such notice is received or be deemed to have accepted the notice ("passive acceptance"). The safeguards described above in proposed paragraph (b)(4) would also apply to sellers receiving a retransmitted notice.

e. Add new paragraph (b)(6) (Notice of "Buy-In" and Confirmation of Receipt), which is contained in the NYSE rule, to clarify that when a notice of "buy-in" or a retransmitted notice thereof is given for less than the full amount of securities due, it shall not be for less than one trading unit.

f. Amend proposed paragraph (d) (Procedures for Closing of Contracts) as follows:

i. Retitle proposed paragraph (d) from the current rule title "Seller's Failure to Deliver After Receipt of Notice" to "Procedures for Closing of Contracts" to better align with the content of that paragraph.

ii. Amend the time frames, as discussed generally above, to generally require the party receiving the "buy-in" notice to deliver the securities to the party issuing the notice by 3 p.m. ET on the effective date of the "buy-in" notice.

iii. Add language to clarify that if the buyer/issuing party prior to executing the "buy-in" is notified by the seller/delivering party that some or all of the securities are in the seller's physical possession and will be delivered to the issuing party then the order to "buy-in" shall not be executed with respect to such securities and the member that initiated the original order to "buy-in" shall accept and pay for such securities. However, if such securities are not promptly delivered the seller that represented that it would make such delivery shall be liable for any resulting damages.

iv. Add language contained in the NYSE rule to clarify the operation of the rule when a retransmitted notice is sent to the defaulting party but not received by such party prior to the delivery of shares or the execution of the "buy-in." In such case, the sender of the notice may unless otherwise agreed promptly reestablish by a new sale the contract subject to the notice of "buy-in."

g. Amend proposed paragraph (h) (Notice of Executed "Buy-In") as follows:

i. Amend the time frame, as discussed above, for notice to be made to the party for whose account the securities were bought to 6 p.m. ET on the date of execution of the "buy-in."

ii. Add new language, not contained in either legacy rule, to clarify that the confirmation of the executed "buy-in" provided for by the rule shall be forwarded to the party entitled to such by no later than 9:30 a.m. ET on the following business day after the execution of the "buy-in."

iii. Add a provision contained in the NYSE rule that requires that a statement of any resulting money differences from the execution of the "buy-in" be provided immediately and that such money differences shall be paid by no later than 3 p.m. ET on the business day after the settlement date of the executed "buy-in."

h. Amend proposed paragraph (i) ("Close-Out" Under the Uniform Practice Code Committee Rulings) to clarify, as provided in the NYSE rule, that notification of all close-outs as provided by the paragraph shall be sent immediately to the member in question pursuant to the confirmation provisions of the Rule 11200 Series at least thirty minutes before such "close-out."

i. Add proposed Supplementary Material .02 (Securities Delivered by Seller After Execution of "Buy-In") to clarify, as provided in the NYSE rule, that where securities have been delivered by the seller after the "buy-in"

order has been placed but not executed, such securities may be returned to the seller if the "buy-in" was executed in accordance with the rule before it could reasonably be cancelled by the initiating party.

4. Proposed FINRA Rule 11820 (Selling-Out)

FINRA is proposing that NASD Rule 11820 (Selling-Out) be adopted as FINRA Rule 11820 (Selling-Out) into the Consolidated FINRA Rulebook, subject to minor changes. There is no comparable NYSE Incorporated Rule. NASD Rule 11820 generally requires the party executing the "sell-out" to notify the buyer on the day of execution, but no later than the close of business local time, where the buyer maintains his office, of the quantity sold and the price received. FINRA is proposing to conform the time frames in the proposed rule to the time frames in proposed FINRA Rule 11810 (Buy-In Procedures and Requirements). Specifically, the proposal would replace the requirement to provide notice "no later than the close of business local time, where the buyer maintains his office," with the requirement that such notice must be provided no later than "6:00 p.m. ET." FINRA believes this change provides clarity and uniformity to the industry. In addition, the proposal would amend certain references in the proposed rule from "should" to "shall." Specifically, in proposed paragraph (b) (Notice of "Sell-Out"), notification by the party executing a "sell-out" shall be in written or electronic form and a formal confirmation of such sale shall be forwarded as promptly as possible after execution of the "sell-out."

5. Proposed FINRA Rule 11860 (COD Orders)

FINRA is proposing to adopt NASD Rule 11860 (Acceptance and Settlement of COD Orders) as FINRA Rule 11860 (COD Orders) into the Consolidated FINRA Rulebook, subject to minor changes and to delete NASD Rule 3370 (Purchases) and Incorporated NYSE Rule 387 (COD Orders) and its Supplementary Material paragraphs .10–.60, NYSE Rule 387 Interpretations/01–/18, Rule 430 (Partial Delivery of Securities to Customers on C.O.D. Purchases), and NYSE Rule 430 Interpretation/01.

NASD Rule 11860 and NYSE Rule 387 provide generally that no member can accept an order from a customer pursuant to an arrangement whereby payment for the securities purchased or delivery of the securities sold is to be made to or by an agent of the customer unless certain specified procedures are followed. NASD Rule 3370 and NYSE Rule 430 both generally provide that no member or associated person may accept a customer's purchase order for securities unless it has first ascertained that the customer placing the order or its agent has agreed to receive the securities against payment in an amount equal to the execution price even though such purchase may represent only a part of a larger order. NYSE Rule 430 has an exception for obligations of the U.S. government.

Proposed FINRA Rule 11860 would continue the requirement in NYSE Rule 430 and NASD Rule 3370 that members prior to accepting a purchase order for a security (without the exception of U.S. government obligations contained in Rule 430) ascertain that the customer or its agent will receive against payment securities in an amount equal to any execution confirmed to the customer even if such execution may represent a partial fill of the order. In that members have been subject to NASD Rule 3370, which includes transactions in U.S. government obligations, FINRA is proposing to eliminate the exemption for such securities as provided by Rule 430. Further, the proposed rule would continue to require the use of either a Clearing Agency or a Qualified Vendor for the electronic confirmation and affirmation of all depository eligible transactions. FINRA is proposing to clarify that the proposed rule would, similar to NYSE Rule 387, apply to (1) transactions of foreign customers and broker-dealers that settle in the U.S. and (2) eligible sinking funds and/or dividend reinvestment transactions. The proposed rule would add a new requirement that is contained in NYSE Rule 387 that requires a "Qualified Vendor" to provide FINRA with copies of its required submissions to the SEC staff.

6. Proposed FINRA Rules 11870 (Customer Account Transfer Contracts) and 11870.03 (Sample Transfer Instruction Forms)

FINRA is proposing to adopt NASD Rule 11870 as FINRA Rule 11870 (Customer Account Transfer Contracts) into the Consolidated FINRA Rulebook with the following changes. There is no comparable NYSE Incorporated Rule.[8] FINRA is also proposing that NASD IM–11870, which contains the Sample Transfer Instruction Forms, be adopted into the Consolidated FINRA Rulebook with minor changes to replace references to NASD with FINRA.

Generally, NASD Rule 11870 provides that when a brokerage customer wishes to transfer his or her account to another member and gives written notice of that fact to the receiving member, both members must expedite and coordinate the transfer. Proposed FINRA Rule 11870 would continue to set forth the required steps that members must follow to effect the transfer of customers' accounts, including the initial request to transfer an account, the time frame in which a transfer request must be acted upon, the validation of such transfer request, and the documentation required to effect the transfer. However, FINRA is proposing to add minor clarifications as well as the following more substantive provisions to proposed FINRA Rule 11870, which were interpretations to the prior version of NYSE Rule 412 [9]:

a. Add a new provision regarding the procedures for the transfer of book-entry mutual fund shares that clarifies the obligations of the parties when transferring a customer's positions in such securities. FINRA proposes to add this provision to paragraph (f)(9) of proposed FINRA Rule 11870.

b. Add a definition of the term "participant in a registered clearing agency" for purposes of the rule to mean a member that is eligible to use the agency's automated customer securities account transfer capabilities.

c. Add Supplementary Material .01 to clarify that members must establish written procedures to effect and supervise the transfer of customer account assets pursuant to the requirements of the proposed rule.

d. Add Supplementary Material .02 to require members to inform customers with respect to retirement plan securities that the choice of the method of disposition of such assets may result in liability for the payment of taxes and penalties.

e. Amend the time frames in the proposed rule for notice and completion of close-outs of fail contracts resulting from the not completing a transfer of a customer's account to conform to the

[8] Previously, NYSE Rule 412 (Customer Account Transfer Contracts) and its related interpretations similarly regulated the transfer of customer accounts. FINRA eliminated NYSE Rule 412 and its interpretations from the Transitional Rulebook as part of a rule change to reduce regulatory duplication for Dual Members during the period before completion of the Consolidated FINRA Rulebook. The NYSE subsequently amended its version of NYSE Rule 412 to state that NYSE members and member organizations shall comply with NASD Rule 11870, concerning the transfer of customer accounts between members, and any amendments thereto, as if such rule is part of the NYSE's rules. See Securities Exchange Act Release No. 58640 (Sept. 12, 2008), 73 FR 54652 (Sept. 22, 2008) (Approval Oder; SR–FINRA–2008–036).

[9] *Id.*

time frames for all close-outs as specified in proposed FINRA Rule 11810 (Buy-In Procedures and Requirements). Specifically, the proposed rule would require the receiving member to provide notice to the carrying member not later than 12 noon ET two business days preceding the execution of the proposed close-out (as opposed to 12 noon "his" time). In addition, the proposed rule would require that every notice of close-out state that the securities may be closed out "unless delivery is effected at or before a certain specified time, which may not be prior to 3 p.m. ET," as opposed to "the local time in the community where the carrying member maintains his office." The proposed rule also would replace the requirement that the party executing the "close-out" notify the seller as to the quantity purchased and the price paid not later than "the close of business, local time, where the seller maintains his office," with the requirement to provide such notice not later than "6 p.m. ET on the date of the execution of such "close-out"."

f. Amend certain references in the proposed rule from "should" to "shall." Specifically, (1) In proposed paragraph (f) (Fail Contracts Established) the obligation that fail contracts established pursuant to the rule shall be clearly marked or captioned as such and that a receiving member shall reject delivery of a security that cannot be deemed a safekeeping position against a fail contract; (2) in proposed paragraph (h) (Close-Out Procedures) that notification shall be in written or electronic form and that confirmation of purchase along with a billing or payment shall be forwarded as promptly as possible; (3) in proposed paragraph (i) (Sell-Out Procedures) that notification shall be in written or electronic form; and (4) in proposed paragraph (m) (Participant in a Registered Clearing Agency) that when both members are participants in a registered clearing agency, the securities account asset transfer procedures shall be accomplished in accordance with the rule and the rules of the registered clearing agency.

g. Eliminate paragraph (n)(3) which requires that a copy of each customer account transfer instruction issued on an "ex-clearing house" basis be sent to the local District Office of NASD having jurisdiction over the carrying member. FINRA believes that a majority of customer account transfers now occur between members of a clearing agency and the volume of transactions that occur "ex-clearing" has significantly decreased.

FINRA will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than ninety days following Commission approval. The implementation date will be no later than 365 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will adopt a majority of the UPC Rules into the new Consolidated FINRA Rulebook without significant changes. FINRA is primarily proposing the changes to update cross-references and reflect the new conventions of the Consolidated FINRA Rulebook. Certain other UPC Rules are being updated to reflect current industry practices.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. FINRA will notify the Commission of any written comments received by FINRA.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[10] 15 U.S.C. 78*o*–3(b)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–030. 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 Section, 100 F Street, NE., Washington, DC 20549–1090, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of FINRA and on FINRA's Web site at *http://www.finra.org.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–030 and should be submitted on or before August 2, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–16866 Filed 7–9–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62453; File No. SR–NYSEArca–2010–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Arca, Inc. To List Options on Trust Issued Receipts in $1 Strike Intervals

July 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 July 2, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.4 Commentary .05 to establish strike price intervals for options on Trust Issued Receipts. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Rule 6.4 Commentary .05 to establish strike price intervals for options on Trust Issued Receipts ("TIRs"), including Holding Company Depositary Receipts ("HOLDRs"), in $1 or greater strike price intervals, where the strike price is $200 or less, and $5 strike price intervals where the strike price is greater than $200.[3]

Currently, the strike price intervals for options on TIRs are as follows: (1) $2.50 or greater where the strike price is $25.00 or less; (2) $5.00 or greater where the strike price is greater than $25.00; and (3) $10.00 or greater where the strike price is greater than $200.[4]

The Exchange is seeking to permit $1 strikes for options on TIRs where the strike price is less than $200 because TIRS have characteristics similar to exchange traded funds ("ETFs"). Specifically, TIRs are exchange-listed securities representing beneficial ownership of the specific deposited securities represented by the receipts. They are negotiable receipts issued by a trust representing securities of issuers that have been deposited and held on behalf of the holders of the TIRs. TIRs, which trade in round-lots of 100, and multiples thereof, may be issued after their initial offering through a deposit with the trustee of the required number of shares of common stock of the underlying issuers. This characteristic of TIRs is similar to that of ETFs which also may be created on any business day upon receipt of the requisite securities or other investment assets comprising a creation unit. The trust only issues receipts upon the deposit of the shares of the underlying securities that are represented by a round-lot of 100 receipts. Likewise, the trust will cancel, and an investor may obtain, hold, trade or surrender TIRs in a round-lot and round-lot multiples of 100 receipts.

Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike is greater than $200. Accordingly, the Exchange believes that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for options on TIRs.[5]

The Exchange has analyzed its capacity and believes the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes where the strike price is less than $200 for options on TIRs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[6] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[7] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system by allowing the Exchange to list options on TIRs at $1 strike price intervals. The Exchange believes that the marketplace and investors expect options on TIRs to trade in a similar manner to ETF options. The Exchange further believes that investors will be better served if $1 strike price intervals are available for options on TIRs where the strike price is less than $200.

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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not 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

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] HOLDRs are a type of Trust Issued Receipt and the current proposal would permit $1 strikes for options on HOLDRS (where the strike price is less than $200).

[4] *See* NYSE Arca Rule 6.4 Commentary .05.

[5] *Id.*

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to a rule of another exchange that has been approved by the Commission.[10] Therefore, the Commission designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2010–65 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-2010–65. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–65 and should be submitted on or before August 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–16851 Filed 7–9–10; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day pre-filing requirement in this case.

[10] *See* Securities Exchange Release No. 34–62141 (May 20, 2010), 75 FR 29787 (May 27, 2010) (SR–CBOE–2010–036).

[11] 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).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62435; File No. SR–NSCC–2010–06]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rules Regarding Membership and Mutual Fund Services

July 1, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 11, 2010, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC.[2] NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) and Rule 19b–4(f)(4) thereunder so that the proposed rule change was effective upon filing with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend NSCC rules to create a new membership category that will allow third party administrators access to NSCC's mutual fund services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In an effort to improve efficiencies in the processing and settlement of mutual fund transactions, NSCC is proposing to establish a new member category called the Third Party Provider member ("TPP Member") that will allow certain financial intermediaries to access NSCC's mutual fund services, including FundSERV.[6] The TPP Member will act as a routing platform that will link the TPP Member's customers to NSCC's Mutual Fund Services. This will allow the TPP Member's customers to gain automated access to funds participating in NSCC's Mutual Fund Services without having to build multiple systems and connections to NSCC. Permitting the TPP Member to act as a

[1] 15 U.S.C. 78s(b)(1).

[2] The text of the proposed rule change is attached as Exhibit 5 to NSCC's filing and is available at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010-06.pdf*.

[3] 15 U.S.C. 78s(b)(3)(A)(iii) and 17 CFR 240.19b–4(f)(4).

[5] The Commission has modified the text of the summaries prepared by the NSCC.

[6] Fund/SERV provides standardized formats and centralized processing of purchase, redemption, and exchange orders and account registrations of mutual fund shares and provides participants with a single daily net settlement.

routing platform should streamline the processing and settlement of fund transactions by allowing access to NSCC's services through a single interface in a seamless automated manner.

Each TPP Member's customer transacting business with an NSCC fund member will be required to enter into a selling group agreement with such fund. Further, because the TPP Member will be a non-settling member with access to Fund/SERV and NSCC's other mutual fund services, the TPP Member must have an NSCC full service member ("settling member") to settle transactions on behalf of the TPP Member's customers. The settling member will receive notice of the settlement obligation for each TPP customer. Each TPP Member's customer will be required to maintain an account relationship with its settling member for the purpose of settling the transactions. Consequently, each TPP Member's customer will be subject to its settling member's customer identification program, due diligence, and where appropriate enhanced due diligence requirements. Because the settling member must be an NSCC full service member, it will be subject to NSCC's standards of membership as if it were to be settling its own transactions in mutual fund services at NSCC.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder that are applicable to NSCC because the proposed rule should streamline the processing and settlement of mutual fund transactions by allowing greater access to its services through a single interface in a seamless automated manner, which should increase efficiencies related to the clearing and settling of mutual fund transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC 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 relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by the NSCC.

[7] 15 U.S.C. 78q–1.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(4)[9] thereunder because it effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov. Please include File Number* SR–NSCC–2010–06 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–NSCC–2010–06. 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 Section, 100 F Street, NE., Washington, DC 20549. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, *http://www.dtcc.com.* 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–NSCC–2010–06 and should be submitted on or before August 2, 2010.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–16847 Filed 7–9–10; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62423; File No. SR–Phlx–2010–88]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX, Inc. Relating to Routing Fees

June 30, 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 June 21, 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 amend its fees governing pricing for Exchange members using the Phlx XL II system,[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May

for routing standardized equity and index option customer and professional orders to away markets for execution.

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqtrader.com/micro.aspx?id=PHLXfilings,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to recoup costs that the Exchange incurs for routing and executing customer and professional orders in equity and index options to away markets.

In May 2009, the Exchange adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC ("NOS"), a member of the Exchange, as the Exchange's exclusive order router.[4] NOS is utilized by the Phlx XL II system solely to route orders in options listed and open for trading on the Phlx XL II system to destination markets.

Currently, the Exchange's Fee Schedule includes Routing Fees for both customer and professional orders. The Exchange currently assesses a Routing Fee of $.40 per contract in all customer and professional[5] option orders that are routed to the NASDAQ Options Market ("NOM").

The Exchange proposes to amend the current fee of $.40 per contract that is assessed for routing customer and professional orders to NOM in all options to $.46 per contract. The Exchange is proposing this amendment in order to recoup clearing and transaction charges which are incurred by the Exchange when orders are routed to NOM. Each destination market's transaction charge varies and there is a standard clearing charge for each transaction incurred by the Exchange. The Exchange proposes this fee change to account for an increase in cost for routing to NOM.[6]

As with all fees, the Exchange may adjust these Routing Fees in response to competitive conditions by filing a new proposed rule change. While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be effective for trades settling on or after July 1, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4) of the Act[8] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that this fee is equitable because it would be equally assessed on all customer and professional orders routed to NOM. The Exchange also believes that this fee is reasonable because the Exchange is seeking to recoup the costs incurred by the Exchange to route customer and professional orders to NOM on behalf of its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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[9] and paragraph (f)(2) of Rule 19b–4[10] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–88 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–2010–88. 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 days between the hours of 10 a.m. and

28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to option orders entered into, and routed by, the Phlx XL II system.

[4] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[5] The Exchange defines a "professional" as any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) (hereinafter "Professional"). *See* 1000(b)14.

[6] *See* SR–NASDAQ–2010–075.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

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–Phlx–2010–88, and should be submitted on or before August 2, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy

Secretary.

[FR Doc. 2010–16846 Filed 7–9–10; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 7084]

Culturally Significant Objects Imported for Exhibition Determinations: "Arcimboldo (1526–1593): Nature and Fantasy"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Arcimboldo (1526–1593): Nature and Fantasy," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about September 19, 2010, until on or about January 9, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: July 2, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–16910 Filed 7–9–10; 8:45 am]

BILLING CODE 4710–05–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 16, 2010, and comments were due by June 15, 2010. No comments were received.

DATES: Comments must be submitted on or before August 11, 2010.

FOR FURTHER INFORMATION CONTACT: Otto Strassburg, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–4161; or e-mail: *Joe.strassburg@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Approval of Underwriters for Marine Hull Insurance.

OMB Control Number: 2133–0517.

Type Of Request: Extension of currently approved collection.

Affected Public: Marine insurance brokers and underwriters of marine insurance.

Form(s): None.

Abstract: This collection of information involves the approval of marine hull underwriters to insure MARAD program vessels. Applicants will be required to submit financial data upon which MARAD approval would be based. This information is needed in order that MARAD officials can evaluate the underwriters and determine their suitability for providing marine hull insurance on MARAD vessels.

Annual Estimated Burden Hours: 46 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, Northwest, Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited On: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (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 the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC, on July 6, 2010.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–16922 Filed 7–9–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Sixth Meeting—Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services.

DATES: The meeting will be held Tuesday, August 3, 2010 from 1:30 p.m.–5 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held at ARINC Building 6, Conference Center Room 6–A1, 2551 Riva Road, Annapolis, Maryland 21401–7435. An

RSVP to Mike Rockwell (*mdr@arinc.com*), Chuck LaBerge (*laberge.engineering@gmail.com*) and Daryl McCall (*dmccall@fastekintl.com*) is requested by close of business Monday, July 26, 2010.

Dress: Business Casual.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 222: Inmarsat Aeronautical Mobile Satellite (Route) Services. The agenda will include:

Tuesday, August 3, 2010—1 p.m.

- Opening Plenary (Introductions and Opening Remarks).
- Review and Approval of SC–222/WP–043, Summary for the 5th Meeting of Special Committee 222 held via telecom April 20, 2010.
- Review and Approval of the Agenda for the 6th Meeting of SC–222, WP–046.
- Old Business.
- Review of/reports for the currently active Action Items regarding SBB Safety issues per the minutes of the 5th Plenary Meeting.
- Working Papers and Discussions regarding SC–222 issues.
- Review SkyTerra submission of modifications to draft ATCt appendix (SkyTerra).
- Status of ATCt filter development activities (Inmarsat).
- Status of Inmarsat SBB development and coordination efforts (Inmarsat).
- Discussion on new SBB documentation approach (Inmarsat/LaBerge).
- Additional working papers as may be provided in advance of the meeting.

Note: Working papers posted to the SC–222 Web Site on before July 24 will receive first priority in review. Additional working papers will be reviewed in the order in which they were received. To obtain a new WP number, contact Dr. LaBerge at laberge.engineering@gmail.com. To post a new WP to the Web site, provide a PDF version to Mr. McCall at *dmccall@fastekintl.com*, with a copy to Dr. LaBerge.

- Additional working papers as may be provided at the meeting.
- Other Business.
- Review of Assignments and Action Items.
- Date and Location for the 7th Meeting of SC–222. Tentatively scheduled for October/November at RTCA.
- Adjourn (no later than 5 p.m.).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 6, 2010.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–16932 Filed 7–9–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0161]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 17 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before August 11, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2010–0161 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this Notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

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:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations 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." FMCSA can renew exemptions at the end of each 2-year period. The 17 individuals listed in this Notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an

exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Ramon Adame

Mr. Adame, age 48, has had retinal detachment in his left eye since 1983. The best corrected visual acuity in his right eye is 20/20 and in his left eye, light perception only. Following an examination in 2009, his optometrist noted, "Has sufficient vision to drive a commercial vehicle." Mr. Adame reported that he has driven straight trucks for 6 years, accumulating 165,000 miles. He holds a Class B Commercial Driver's License (CDL) from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Calvin D. Bills

Mr. Bills, 59, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/20. Following an examination in 2009, his optometrist noted, "Mr. Calvin Bills, in my opinion, has the ability and sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Bills reported that he has driven straight trucks for 5 years, accumulating 50,000 miles and tractor-trailer combinations for 10 years, accumulating 4 million miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Joel W. Bryant

Mr. Bryant, 53, has had a prosthetic right eye since 1990 due to a traumatic injury. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2009, his optometrist noted, "Mr. Bryant appears to have sufficient vision to perform driving tasks in operating a commercial vehicle using his left eye." Mr. Bryant reported that he has driven straight trucks for 32 years, accumulating 1.2 million miles and tractor-trailer combinations for 3 years, accumulating 150,000 miles. He holds a Class D chauffeur's license from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jonathan Carriaga

Mr. Carriaga, 35, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/60. Following an examination in 2010, his optometrist noted, "In my medical opinion Jonathan Carriaga has sufficient vision with or without glasses to drive a commercial vehicle safely." Mr. Carriaga reported that he has driven straight trucks for 12 years, accumulating 62,400 miles and tractor-trailer combinations for 10 years, accumulating 52,000 miles. He holds a Class A CDL from New Mexico. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael R. Clark

Mr. Clark, 54, has had macular scarring in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in his left eye, 20/15. Following an examination in 2010, his optometrist noted, "It is my medical opinion that Mr. Clark has sufficient vision to perform all driving tasks required of him to drive a commercial vehicle." Mr. Clark reported that he has driven straight trucks for 5 years, accumulating 100,000 miles and tractor-trailer combinations for 26 years accumulating 1.3 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James D. Drabek, Jr.

Mr. Drabek, 52, has had idiopathic macular choroidal neovascularization in both eyes since 1998. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "James Drabek, Jr. has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Drabek reported that he has driven tractor-trailer combinations for 28 years, accumulating 1.4 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Curtis E. Firari

Mr. Firari, 54, has had macular scarring in his left eye since 1976. The best corrected visual acuity in his right eye is 20/15 and in his left eye, 20/350. Following an examination in 2010, his optometrist noted, "In my opinion, Curt has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Firari reported that he has driven tractor-trailer combinations for 33 years accumulating 330,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Percy L. Gaston

Mr. Gaston, 57, has had central vision loss in his right eye since childhood. The best corrected visual acuity in his right eye is hand-motion vision and in his left eye, 20/20. Following an examination in 2010, his ophthalmologist noted, "Patient has sufficient vision at this time to operate a commercial vehicle." Mr. Gaston reported that he has driven straight trucks for 2 years, accumulating 5,200 miles and tractor-trailer combinations for 29 years, accumulating 105,560 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Ronald M. Green

Mr. Green, 51, has had central serous retinopathy in his right eye since 1997. The best corrected visual acuity in his right eye is 20/60 and in his left eye, 20/15. Following an examination in 2010, his optometrist noted, "I certify that in my medical opinion, Ronald Green has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Green reported that he has driven tractor-trailer combinations for 13 years, accumulating 1 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard Iocolano

Mr. Iocolano, 51, has had retinal scarring in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his ophthalmologist noted, "In my opinion Richard has sufficient vision to perform the driving tasks required to operate a commercial vehicle safely." Mr. Iocolano reported that he has driven straight trucks for 35 years, accumulating 350,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Daniel W. Johnson

Mr. Johnson, 50, has had retinal scarring in his right eye since 2002. The best corrected visual acuity in his right eye is light perception only and in his left eye, 20/20. Following an examination in 2010, his optometrist noted, "There would be no reason to think that he could not perform all the visual tasks required to drive. It is my opinion that he is visually able to perform commercial driving tasks." Mr. Johnson reported that he has driven

straight trucks for 3 years, accumulating 39,000 miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Albert E. Joiner

Mr. Joiner, 53, has had macular scarring in his right eye since 2006. The best corrected visual acuity in his right eye is 20/400 and in his left eye, 20/20. Following an examination in 2009, his ophthalmologist noted, "In my medical opinion, I believe the applicant has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Joiner reported that he has driven straight trucks for 4 years, accumulating 166,400 miles and tractor-trailer combinations for 33 years, accumulating 2.5 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard L. Kelley

Mr. Kelley, 72, has had optic nerve atrophy in his left eye since 2000. The best corrected visual acuity in his right eye is 20/25 and in his left eye, 20/150. Following an examination in 2010, his ophthalmologist noted, "It is my opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Kelley reported that he has driven tractor-trailer combinations for 27 years, accumulating 3.3 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles E. Queen

Mr. Queen, 53, sustained traumatic injury to his left optic nerve at age 14. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/300. Following an examination in 2009, his optometrist noted, "In my medical opinion, Charles E. Queen has sufficient peripheral vision to perform the driving tasks required to operate a commercial vehicle." Mr. Queen reported that he has driven straight trucks for 26 years, accumulating 1.6 million miles and tractor-trailer combinations for 26 years, accumulating 1.6 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Matias P. Quintanilla

Mr. Quintanilla, 47, has a ruptured globe in his left eye due to a traumatic injury sustained in 2005. The best corrected visual acuity in his right eye is 20/20 and in his left eye, hand-motion vision. Following an examination in 2010, his optometrist noted, "In my opinion, he should have sufficient vision to operate a commercial vehicle." Mr. Quintanilla reported that he has driven tractor-trailer combinations for 9 years, accumulating 720,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Richard T. Traigle

Mr. Traigle, 49, has had macular scarring in his left eye since 2000. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2010, his ophthalmologist noted, "In my medical opinion, Mr. Traigle has sufficient vision to perform any driving tasks that he may need to perform in operating a commercial vehicle." Mr. Traigle reported that he has driven straight trucks for 15 years, accumulating 300,000 miles. He holds a Class D chauffeur's from Louisiana. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Eugene E. Wright

Mr. Wright, 62, has had amblyopia in his left eye since 1998. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/400. Following an examination in 2010, his ophthalmologist noted, "In my opinion he has adequate visual acuity and field to drive a commercial vehicle." Mr. Wright reported that he has driven tractor-trailer combinations for 16 years, accumulating 1.5 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this Notice. The Agency will consider all comments received before the close of business August 11, 2010. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable.

In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: June 30, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–16830 Filed 7–9–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2010–0082]

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 22 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 July 12, 2010. The exemptions expire on July 12, 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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

Background

On May 10, 2010, FMCSA published a Notice of receipt of exemption applications from certain individuals, and requested comments from the public (75 FR 25917). That Notice listed 22 applicants' case histories. The 22 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 22 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 22 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, choroidal melanoma, complete loss of vision, corioretinal scarring, glaucoma, macular scarring, ocular histoplasmosis, and prosthesis. In most cases, their eye conditions were not recently developed. All but 9 of the applicants were either born with their vision impairments or have had them since childhood. The 9 individuals who sustained their vision conditions as adults have had them for periods ranging from 4 to 21 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 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 22 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 47 years. In the past 3 years, four of the drivers had convictions for traffic violations and one of the drivers was involved in a crash.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 10, 2010 notice (75 FR 25917).

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 22 applicants, two of the applicants had traffic violations for speeding, one of the applicants had a traffic violation for failure to obey a traffic control device, one of the applicants had a traffic violation for failure to use the proper signal while changing lanes and one of the drivers was involved in a crash. 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 22 applicants listed in the notice of May 10, 2010 (75 FR 25917).

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 22 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 one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it had reviewed the driving record for Terry L. Rubendall and was in favor of granting a Federal vision exemption to this individual.

Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA exempts Clarke C. Boynton, Clare H. Buxton, Raul Charo, Lester M. Ellingson, Jr., Miguel H. Espinoza, Billy R. Gibbs, Clyde J. Harms, Ricky P. Hastings, Wesley V. Holland, William D. Holt, Azizi A. Jamal, William L. Martin, Gary G. McKown, Larry D. Moss, Leland B. Moss, Michael J. Rankin, Jacob H. Riggle, Terry L. Rubendall, Michael L. Skeens, Lee F. Taylor, Aaron E. Wright and Michael A. Zingarella, Sr., 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 June 30, 2010.

Larry W. Mino,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–16833 Filed 7–9–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, § 10(a)(2), that a meeting will be held at the The Sofitel—Washington DC, Lafayette Square, at 806 15th Street, NW., Washington, DC, on August 3, 2010 at 10 a.m. of the following debt management advisory committee: Treasury Borrowing Advisory Committee of The Securities Industry and Financial Markets Association.

The agenda for the meeting provides for a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues and conduct a working session. Following the working session, the Committee will present a written report of its recommendations. The meeting will be closed to the public, pursuant to 5 U.S.C. App. 2, § 10(d) and Public Law 103–202, § 202(c)(1)(B) (31 U.S.C. 3 121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of agencies by 5 U.S.C. App. 2, § 10(d) and vested in me by Treasury Department Order No. 101–05, that the meeting will consist of discussions and debates of the issues presented to the Committee by the Secretary of the Treasury and the making of recommendations of the Committee to the Secretary, pursuant to Public Law 103–202, § 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the meeting is concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to

the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decisions on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, § 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the Committee, premature disclosure of the Committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, this meeting falls within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

Treasury staff will provide a technical briefing to the press on the day before the Committee meeting, following the release of a statement of economic conditions and financing estimates. This briefing will give the press an opportunity to ask questions about financing projections. The day after the Committee meeting, Treasury will release the minutes of the meeting, any charts that were discussed at the meeting, and the Committee's report to the Secretary.

The Office of Debt Management is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of Committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552(b). The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Fred Pietrangeli, Deputy Director for Office of Debt Management (202) 622–1876.

Dated: July 2, 2010.

Mary Miller,

Assistant Secretary, (Financial Markets).

[FR Doc. 2010–16750 Filed 7–9–10; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Tribal Economic Development Bonds

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury ("Treasury") seeks comments from Indian Tribal Governments regarding the Tribal Economic Development Bond provision in Section 7871(f) of the Internal Revenue Code. The purpose of this solicitation of comments is to assist Treasury in developing recommendations regarding this bond provision for a Congressionally-directed study under the American Recovery and Reinvestment Act of 2009. This solicitation of comments is in furtherance of the objectives of Executive Order 13175 under which Treasury consults with tribal officials in the development of Federal policies that have tribal implications, to reinforce the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes. Additional comments from the general public related to this matter are also welcome.

DATES: Please submit comments on or before September 10, 2010.

FOR FURTHER INFORMATION CONTACT: John J. Cross III, Office of Tax Policy, at (202) 622–1322.

SUPPLEMENTARY INFORMATION:

Introduction and Background

Section 1402 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Public Law No. 111–5, 123 Stat. 115 (2009) ("ARRA"), added a $2 billion bond authorization for a new temporary category of tax-exempt bonds with lower borrowing costs for Indian tribal governments, known as "Tribal Economic Development Bonds," under Section 7871(f) of the Internal Revenue Code ("Code") to promote economic development on tribal lands. (Except as noted, section references in this Notice are to the Code.) Section 1402(b) of ARRA directs the Secretary of the Treasury or the Secretary's delegate to conduct a study of the Tribal Economic Development Bond provision and to report back to Congress with recommendations regarding this provision. In a summary of this ARRA provision, the House Ways and Means Committee and the Senate Finance Committee indicated that, in particular, Treasury should study whether to repeal on a permanent basis the existing more restrictive "essential governmental function" standard for tax-exempt governmental bond financing by Indian tribal governments under Section 7871(c). *See http://waysandmeans.house.gov/media/pdf/111/arra.pdf.*

The more restrictive existing standard under Section 7871(c) generally limits the use of tax-exempt bonds by Indian tribal governments to the financing of certain activities that constitute "essential governmental functions" customarily performed by State and local governments with general taxing powers and certain manufacturing facilities. The essential governmental function standard under Section 7871(c) was enacted originally in 1982 as part of the Indian Tribal Government Tax Status Act, Public Law No. 97–473 (1983), 96 Stat. 2605 ("Tribal Tax Act"). The legislative history to the Tribal Tax Act indicated that essential governmental functions for this purpose included activities such as schools, streets, or sewers, but did not include activities financed with private activity bonds or other commercial or industrial activities. *See* H.R. Rep. No. 97–982, 97th Cong. 2d Sess. 17 (1982) and S. Rep. No. 97–646, 97th Cong. 2d. Sess. at 13–14 (1982).

In 1987, Section 7871(e) was added to the Code to limit the essential governmental functions standard further to provide that an essential governmental function does not include any function which is not customarily performed by State and local governments with general taxing powers. *See* The Omnibus Budget Reconciliation Act of 1987, Public Law No. 100–203, 101 Stat. 1330, § 10632(a) (1987). Further, in the legislative history to this provision, the House Ways and Means Committee criticized 1984 Temporary Treasury Regulations under section 7871(c) for treating certain commercial and industrial activities eligible for Federal funding as essential governmental functions and indicated that these regulations were invalid to that extent. H.R. Rep. No. 100–391, 100th Cong. 1st Sess. at 1139 (1987). However, in 1987, Section 7871(c)(3) was added to the Code to allow Indian tribal governments to use tax-exempt bond financing for manufacturing facilities under certain parameters.

The custom-based essential governmental function standard under Section 7871(e) has proven to be a difficult administrative standard and has led to audit disputes, based on difficulties in determining customs, the evolving nature of the functions customarily performed by State and local governments, and increasing involvement of State and local governments in quasi-commercial activities.

In 2006, Treasury and the Internal Revenue Service ("IRS") promulgated an Advance Notice of Proposed Rulemaking regarding the essential governmental function standard for the issuance of tax-exempt bonds by Indian

tribal governments under Section 7871. *See* 71 FR 45474 (August 9, 2006) (the "2006 Advance Notice"). In the 2006 Advance Notice, Treasury and the IRS indicated that proposed regulations will treat an activity as an essential governmental function that is customarily performed by State and local governments under Section 7871(c) and Section 7871(e) if: (1) There are numerous State and local governments with general taxing powers that have been conducting the activity and financing it with tax-exempt governmental bonds, (2) State and local governments with general taxing powers have been conducting the activity and financing it with tax-exempt governmental bonds for many years, and (3) the activity is not a commercial or industrial activity. The 2006 Advance Notice further indicated that examples of activities customarily performed by State and local governments will include, but will not be limited to, public works projects such as roads, schools, and government buildings.

In general, new Section 7871(f) regarding Tribal Economic Development Bonds gives Indian tribal governments greater flexibility to use tax-exempt bonds to finance economic development projects than is allowable under the existing standard of Section 7871(c). The more flexible standard under new Section 7871(f) generally allows Indian tribal governments to use tax-exempt bonds under a new $2 billion volume cap to finance economic development projects (excluding certain gaming facilities and excluding projects located outside of Indian reservations under Section 7871(f)(3)(B)) or other activities under comparable standards for which State or local governments are eligible to use tax-exempt bonds under Section 103.

State and local governments generally can use tax-exempt "governmental" bonds (as contrasted with "private activity bonds," as further described herein) to finance an unspecified broad range of projects and activities so long as private involvement is limited sufficiently to avoid classification as private activity bonds. Bonds are classified as private activity bonds if private involvement exceeds both of the following thresholds: (1) More than 10 percent of the bond proceeds are used for private business use; and (2) the debt service on more than 10 percent of bond proceeds is payable or secured from payments or property used for private business use. Thus, under this general standard for State and local governments, bonds qualify as tax-exempt governmental bonds if the bond proceeds are used predominantly for State or local governmental use. Special rules under Sections 141(b)(3) and 141(c) further limit the use of tax-exempt governmental bonds in certain circumstances involving disproportionate or unrelated private business use and private loans.

By contrast, private business use generally arises from private business ownership, leasing, or certain other arrangements involving private business use of bond-financed facilities. Certain safe harbors allow private businesses to manage governmental facilities under management contracts with prescribed compensation arrangements without resulting in private business use. *See* Rev. Proc. 97–13, 1997–1 C.B. 632.

Bonds also qualify as tax-exempt governmental bonds if, despite private business use, the bonds are payable predominantly from State or local governmental sources of payment, such as generally applicable taxes.

State and local governments also are eligible to use tax-exempt qualified private activity bonds under Section 141(e) and related provisions without regard to private business use or the level of private involvement to finance certain specified types of projects and activities, including the following: (1) Airports, (2) docks and wharves, (3) mass commuting facilities, (4) facilities for the furnishing of water, (5) sewage facilities, (6) solid waste disposal facilities, (7) qualified low-income residential rental multifamily housing projects, (8) facilities for the local furnishing of electric energy or gas, (9) local district heating or cooling facilities, (10) qualified hazardous waste facilities, (11) high-speed intercity rail facilities, (12) environmental enhancements of hydroelectric generating facilities, (13) qualified public educational facilities, (14) qualified green buildings and sustainable design projects, (15) qualified highway or surface freight transfer facilities, (16) qualified mortgage bonds or qualified veterans mortgage bonds for certain single-family housing mortgage loans, (17) qualified small issue bonds for certain manufacturing facilities, (18) qualified student loan bonds, (19) qualified redevelopment bonds, and (20) qualified 501(c)(3) bonds for exempt charitable and educational activities of Section 501(c)(3) nonprofit organizations.

Subject to certain exceptions, most types of tax-exempt qualified private activity bonds are subject to annual State bond volume caps based on State populations, with adjustments for inflation and minimum allocations for smaller States, and with three-year carryforward periods for unused allocations. For 2010, each State's private activity bond volume cap is equal to the greater of: (1) $90 multiplied by the State population; or (2) $273,775,000. Exceptions to the State private activity bond volume caps apply to certain governmentally-owned projects (including airports, docks and wharves, environmental enhancements of hydroelectric generating facilities, high-speed intercity rail facilities, and solid waste disposal facilities), qualified veterans mortgage bonds, and qualified 501(c)(3) bonds.

In general, the new $2 billion bond authorization for Tribal Economic Development Bonds under Section 7871(f) allows Indian tribal governments to use tax-exempt bonds to finance an unspecified broad range of governmentally-used projects, including hotels or convention centers, as well as projects involving certain qualified private activities, to the same extent and subject to the same limitations imposed on State and local governments under Section 103. In addition, Tribal Economic Development Bonds may be issued as Build America Bonds under Section 54AA upon satisfaction of the additional eligibility requirements for Build America Bonds. See IRS Chief Counsel Advice No. AM 2009–14 (October 26, 2009).

Section 7871(f)(3)(B) includes certain limitations on Tribal Economic Development Bonds that prohibit the use of any proceeds of these bonds to finance either of the following: (1) Any portion of a building in which class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act) is conducted or housed or any other property actually used in the conduct of such gaming; or (2) any facility located outside the Indian reservation (as defined in Section 168(j)(6)).

Section 7871(f)(1) requires Treasury to allocate the $2 billion national volume cap for Tribal Economic Development Bonds among Indian tribal governments in such manner as Treasury, in consultation with the Secretary of the Interior, determines to be appropriate.

Pursuant to Notice 2009–51, 2009–28 IRB 128 (July 13, 2009), Treasury and the IRS solicited applications for allocation of the $2 billion in bond volume cap of Tribal Economic Development Bonds and provided guidance on the application procedures, deadlines, forms, and methodology for allocating this bond volume cap. Generally, Treasury employed a pro rata allocation method to allocate this bond volume cap in two separate $1 billion phases, subject to specified maximum allocations for any particular Indian tribal government. Treasury and the IRS

announced the results of the two phases of Tribal Economic Development Bond allocations in IRS News Release 2009–81 (September 15, 2009) and IRS News Release 2010–20 (February 11, 2010). For further information regarding these bond allocations, *see http://www.irs.gov* under the heading "Tax-exempt Bond Community" and subheading "IRS Announces Tribal Economic Development Bond Allocations."

Request for Comment on Particular Questions

In order to assist Treasury in developing recommendations for its study of the Tribal Economic Development Bond provision, Treasury seeks public comment on the following particular questions.

Whether the State or Local Governmental Standard for Tax-Exempt Governmental Bond Status Should Replace the Essential Governmental Function Standard

A State or local governmental bond is treated as a tax-exempt governmental bond (rather than a private activity bond) under Section 141 if either 90 percent or more of the bond proceeds are used for governmental use (*i.e.,* not private business use) or 90 percent or more of the debt service on the bonds is payable or secured from governmental payments or property, as previously described herein. In treating Indian tribal government use of facilities financed with Tribal Economic Development Bonds as governmental use under Section 141, the Tribal Economic Development Bond provision effectively applies this standard.

1. In general, should consideration be given to changing the law permanently to apply the standard described above, applicable to State and local governments under Section 141, with respect to tax-exempt bond financing for Indian tribal governments (rather than the existing essential governmental function standard under Section 7871(c))?

2. Would focusing on Indian tribal governmental use of bond-financed facilities (rather than essential governmental functions) under the standard applicable to State and local governments provide Indian tribal governments with a sufficiently workable and flexible standard for tax-exempt governmental bond financing?

3. In determining qualified governmental sources of payment for tax-exempt governmental bonds for Indian tribal governments, should special consideration be given to any unique sources of revenue for Indian tribal governments, including (i) income derived from tribal lands held in trust by the Department of the Interior, (ii) state and local government revenues from oil, gas, or other natural resources on Indian tribal government lands, or (iii) revenue derived from gaming or other tribally owned corporate interests, in comparison to the general tax-based sources of revenue for State and local governments?

Types of Projects and Activities Eligible for Financing With Private Activity Bonds

For State and local governments, Section 141 provides that certain specific types of projects and activities may be financed with qualified tax-exempt private activity bonds, as described previously herein.

4. Should consideration be given to changing the law permanently to authorize Indian tribal governments to use qualified tax-exempt private activity bonds for the same types of projects and activities as are allowed for State and local governments?

5. Are there any specific additional types of projects or activities beyond those allowed for State and local governments for which Indian tribal governments should be authorized (or not authorized) to use qualified tax-exempt private activity bonds (*i.e.,* in which private business ownership, leasing, or other private business use of the bond-financed projects would be permitted) in light of their special needs or unique circumstances? For example, would federal corporations chartered under Section 17 of the Indian Reorganization Act of 1934 (25 U.S.C. 477) require special provisions to use qualified tax-exempt private activity bonds?

Private Activity Bond Volume Cap Considerations

In the case of State and local governments, an annual State bond volume cap applies to qualified tax-exempt private activity bonds based on State populations. For 2010, each State's private activity bond volume cap is equal to the greater of: (1) $90 multiplied by the State population; or (2) $273,775,000. In the case of Indian tribal governments, the new Tribal Economic Development Bond provision under Section 7871(f) included a $2 billion total national bond volume cap on these bonds.

6. If Congress were to determine that it was necessary to impose some form of bond volume cap on the use of qualified tax-exempt private activity bonds by Indian tribal governments similar to that imposed on State and local governments, how specifically should such a bond volume cap be structured to best promote fair, effective, and workable use? One option would be to allocate the private activity bond volume cap among Indian tribal governments based on population, coupled with some minimum allocation for small Indian tribal governments. Another option, similar to that used for the $2 billion Tribal Economic Development Bond authorization, would be for Treasury (or another Federal agency, such as the Department of the Interior's Bureau of Indian Affairs) to allocate the volume cap using some prescribed method, such as a population-based allocation method that incorporates an adjustment factor to take into account holdings of land and other natural resources in the case of tribes with small populations. Suggestions for other alternative allocation methods are welcome.

Considerations Regarding the Restriction Against Financing Projects Located Outside of Indian Reservations

Section 7871(f)(3)(B)(ii) includes a restriction that limits the use of Tribal Economic Development Bonds to the financing of projects that are located on Indian reservations (as defined in Section 168(j)(6)). Section 168(j)(6) provides that the term "Indian reservation" means a reservation as defined in § 3(d) of the Indian Financing Act of 1974, 25 U.S.C. 1452(d), applied by treating the term "Indian reservations in Oklahoma" as including only lands that are within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) and which are recognized by the Secretary of the Interior as eligible for trust land status under 25 CFR part 151 (as in effect on August 5, 1997 or a reservation defined in § 4(10) of the Indian Child Welfare Act of 1978, 25 U.S.C. 1903(10).

7. Should the limitation on use of Tribal Economic Development Bonds to finance projects that are located outside of Indian reservations be modified to address special needs or unique circumstances of Indian tribal governments? For example, should consideration be given to allowing the use of Tribal Economic Development Bonds to finance projects within some prescribed reasonable proximity to Indian reservations or projects located on land owned by Indian tribal governments which has not formally been designated in trust as part of an Indian reservation?

Considerations Regarding the Restriction Against Financing Gaming Facilities

Section 7871(f)(3)(B)(i) prohibits the use of Tribal Economic Development Bonds to finance any portion of a building in which class II or class III gaming (as defined in section 4 of the Indian Gaming Regulatory Act) is conducted or housed or any other property actually used in the conduct of such gaming.

8. Should the prohibition on the use of Tribal Economic Development Bonds to finance gaming facilities be modified to address special needs or unique circumstances of Indian tribal governments?

Additional General Comments on Special Needs or Unique Circumstances of Indian Tribal Governments

9. Are there additional factors that should be considered in refining the statutory scope of tax-exempt bond financing for Indian tribal governments to better address the special needs or unique circumstances of Indian tribal governments? Such factors might include, for example, special sources of revenue, priority government-like activities, geographic distribution and legal status of land associated with Indian tribal governments, or credit market access considerations.

Certain Identifying Information

When submitting comments, please include your name, affiliation, address, e-mail address, and telephone number.

Comments are Public Information

All comments received, including attachments and other supporting materials, are part of the public record and are subject to public disclosure. Commentators should submit only information that they wish to make available publicly.

ADDRESSES: Please submit comments electronically through *Tribal.Consult@do.treas.gov*. Alternatively, comments may be mailed to: Tribal Economic Development Bond Comments, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Room 3454, Washington, DC 20220.

Dated: July 6, 2010.

Michael F. Mundaca,

Assistant Secretary for Tax Policy, U.S. Department of the Treasury.

[FR Doc. 2010–16881 Filed 7–9–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

Proposed Information Collections; Comment Request

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, and as required by the Paperwork Reduction Act of 1995, we invite comments on the proposed or continuing information collections listed below in this notice.

DATES: We must receive your written comments on or before September 10, 2010 .

ADDRESSES: You may send comments to Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, at any of these addresses:

- P.O. Box 14412, Washington, DC 20044–4412;
- 202–453–2686 (facsimile); or
- *formcomments@ttb.gov* (e-mail).

Please send separate comments for each specific information collection listed below. You must reference the information collection's title, form or recordkeeping requirement number, and OMB number (if any) in your comment. If you submit your comment via facsimile, send no more than five 8.5 × 11 inch pages in order to ensure electronic access to our equipment.

FOR FURTHER INFORMATION CONTACT: To obtain additional information, copies of the information collection and its instructions, or copies of any comments received, contact Mary A. Wood, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412; or telephone 202–453–2265.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Department of the Treasury and its Alcohol and Tobacco Tax and Trade Bureau (TTB), as part of their continuing effort to reduce paperwork and respondent burden, invite the general public and other Federal agencies to comment on the proposed or continuing information collections listed below in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for Office of Management and Budget (OMB) approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments.

We invite comments on: (a) Whether this information collection is necessary for the proper performance of the agency's functions, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the information collection's burden; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the information collection's burden on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide the requested information.

Information Collections Open for Comment

Currently, we are seeking comments on the following forms and recordkeeping requirements:

Title: Brewer's Report of Operations and Brewpub Report of Operations.

OMB Control Number: 1513–0007.

TTB Form Numbers: 5130.9 and 5130.26.

Abstract: Brewers periodically file these reports of their operations to account for activity relating to taxable commodities. TTB uses this information primarily for revenue protection, for audit purposes, and to determine whether an activity is in compliance with the requirements of law. We also use this information to publish periodical statistical releases of use and interest to the industry.

Current Actions: We are submitting this information collection as a revision. We are correcting the number of respondents and burden hours; however, the information collection instruments remain unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,026.

Estimated Total Annual Burden Hours: 12,152.

Title: Brewer's Bond; Brewer's Bond Continuation Certificate; Brewer's Collateral Bond; and Brewer's Collateral Bond Continuation Certificate.

OMB Control Number: 1513–0015.

TTB Form Numbers: 5130.22, 5130.23, 5130.25, and 5130.27, respectively.

Abstract: The Internal Revenue Code requires brewers to give a bond to

protect the revenue and to ensure compliance with the requirements of law and regulations, and the Continuation Certificate is used to renew the bond every 4 years after the initial bond is obtained. Bonds and continuation certificates are required by law and are necessary to protect government interests in the excise tax revenues that brewers pay.

Current Actions: We are submitting this information collection as a revision. We are correcting the number of respondents and burden hours; however, the information collection instruments remain unchanged.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 2,026.

Estimated Total Annual Burden Hours: 380.

Title: Signing Authority for Corporate and LLC Officials.

OMB Control Number: 1513–0036.

TTB Form Number: 5100.1.

Abstract: TTB F 5100.1 is used to document the authority of an individual or office to sign for the corporation in TTB matters. The form identifies the corporation/LLC, the individual, or office authorized to sign, and documents the authorization.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Total Annual Burden Hours: 250.

Title: Monthly Report of Processing Operations.

OMB Control Number: 1513–0041.

TTB Form Number: 5110.28.

TTB Recordkeeping Number: 5110/03.

Abstract: The information collected accounts for and verifies the processing of distilled spirits in bond. It is used to monitor proprietor activities, in auditing plant operations, and for compiling statistics.

Current Actions: We are submitting this information collection for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 239.

Estimated Total Annual Burden Hours: 5,737.

Title: Application for Registration for Tax-Free Transactions under 26 U.S.C. 4221.

OMB Control Number: 1513–0095.

TTB Form Number: 5300.28.

Abstract: Businesses and State and local governments apply for registration to sell or purchase firearms or ammunition tax-free on this form. TTB uses the form to determine if a transaction is qualified for tax-free status.

Current Actions: We are submitting this information collection request for extension purposes only. The information collection, estimated number of respondents, and estimated total annual burden hours remain unchanged.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit; State, local, and Tribal Government.

Estimated Number of Respondents: 317.

Estimated Total Annual Burden Hours: 951.

Dated: July 6, 2010.

Gerald Isenberg,

Director, Regulations and Rulings Division.

[FR Doc. 2010–16843 Filed 7–9–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

Health Services Research and Development Service Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Health Services Research and Development Service Merit Review Board will be held August 31–September 2, 2010, at the Chicago Marriott Downtown Magnificent Mile, 540 North Michigan Avenue, Chicago, IL 60611. Various subcommittees of the Board will meet. Each subcommittee meeting of the Board will be open to the public the first day for approximately one half-hour from 8 a.m. until 8:30 a.m. to cover administrative matters and to discuss the general status of the program. The remaining portion of the meetings will be closed. The closed portion of each meeting will involve discussion, examination, reference to, and oral review of the research proposals and critiques.

The purpose of the Board is to review research and development applications involving the measurement and evaluation of health care services, the testing of new methods of health care delivery and management, and nursing research. Applications are reviewed for scientific and technical merit. Recommendations regarding funding are submitted to the Chief Research and Development Officer.

On August 31, the subcommittee on Nursing Research Initiative will convene from 8 a.m. to 2 p.m. and Career Development Award will convene from 8 a.m. to 5 p.m. On September 1, the Career Development Award will continue from 8 a.m. to 1 p.m. and six subcommittees on Health Services Research (1, 2, 3, 4, 5 and 6) will convene from 8 a.m. to 5 p.m. On September 2, the subcommittee on Health Services Research 7 for Pilot Proposal Review will convene from 8 a.m. to 3:30 p.m.

During the closed portion of each meeting, discussion and recommendations will include qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would likely compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92–463, as amended by Public Law 94–409, closing portions of each meeting is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Those who plan to attend the open session should contact Mrs. Kristy Benton-Grover, Scientific Merit Review Program Manager (124R), Health Services Research and Development Service, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, or e-mail at *Kristy.Benton-Grover@va.gov* at least 5 days before the meeting. For further information, please call (202) 461–1521.

By Direction of the Secretary.

Dated: July 6, 2010.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–16857 Filed 7–9–10; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
July 12, 2010

Part II

Environmental Protection Agency

40 CFR Part 98

Mandatory Reporting of Greenhouse Gases From Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste Landfills; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2008–0508; FRL–9171–1]

RIN 2060–AQ03

Mandatory Reporting of Greenhouse Gases From Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating a regulation to require monitoring and reporting of greenhouse gas emissions from magnesium production, underground coal mines, industrial wastewater treatment, and industrial waste landfills. This action adds these four source categories to the list of source categories already required to report greenhouse gas emissions. This action requires monitoring and reporting of greenhouse gases for these source categories only for sources with carbon dioxide equivalent emissions above certain threshold levels as described in this regulation. This action does not require control of greenhouse gases.

DATES: The final rule is effective on September 10, 2010. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 10, 2010.

ADDRESSES: EPA established a single docket under Docket ID No. EPA–HQ–OAR–2008–0508 for this action and for the previous action promulgated October 30, 2009 (74 FR 56260). All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. This Docket Facility 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 Air Docket is (202) 566–1741.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9263; fax number: (202) 343–2342; e-mail address: *GHGReportingRule@epa.gov.* For technical information and implementation materials, please go to the Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* To submit a question, select Rule Help Center, followed by Contact Us.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). *See* CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to "such other actions as the Administrator may determine."). The final rule affects underground coal mines, magnesium production, industrial waste landfills, and industrial wastewater treatment facilities that are direct emitters of greenhouse gases (GHGs). Regulated categories and entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
Magnesium Production	331419	Primary refiners of nonferrous metals by electrolytic methods.
	331492	Secondary magnesium processing plants.
Underground Coal Mines	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.
Industrial Waste Landfills	562212	Solid waste landfills.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	221320	Sewage treatment facilities.
Industrial Wastewater Treatment	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
	324110	Petroleum refineries.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this action. Although Table 1 of this preamble lists the types of facilities that EPA is now aware could be potentially affected by the reporting requirements, other types of facilities not listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A as amended by this action. If you have questions regarding the applicability of this action to a particular facility, consult the person

listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Many facilities affected by this final rule have GHG emissions from other source categories listed in 40 CFR part 98. Table 2 of this preamble has been developed as a guide to help reporters affected by this action identify other source categories (by subpart) that they may need to (1) consider in their facility applicability determination, and (2) include in their reporting. Table 2 of this preamble identifies the subparts that are likely to be relevant to sources with magnesium production, underground coal mines, industrial wastewater treatment, and industrial waste landfills. The table should only be seen as a guide. Additional subparts in 40 CFR part 98 may be relevant for a given reporter, while some subparts listed in Table 2 of this preamble may not be relevant to all reporters in these source categories.

TABLE 2—SOURCE CATEGORIES AND RELEVANT SUBPARTS

Source category (and main applicable subpart)	Other Subparts in 40 CFR part 98 recommended for review to determine applicability
Magnesium Production	Subpart C: General Stationary Fuel Combustion.
Underground Coal Mines	Subpart C: General Stationary Fuel Combustion.
Industrial Waste Landfills [a]	Subpart C: General Stationary Fuel Combustion. Subpart Y: Petroleum Refineries. Subpart AA: Pulp and Paper Manufacturing. Subpart II: Industrial Wastewater Treatment.
Industrial Wastewater Treatment	Subpart C: General Stationary Fuel Combustion. Subpart Y: Petroleum Refineries. Subpart AA: Pulp and Paper Manufacturing. Subpart TT: Industrial Waste Landfills.

[a] The industrial landfills source category was proposed with municipal solid waste landfills under 40 CFR part 98, subpart HH in the April 10, 2009 proposal (74 FR 16448). However, EPA has since decided to separate landfills into two subparts: subpart HH for municipal solid waste landfills (promulgated October 30, 2009 (74 FR 56374) and subpart TT for industrial waste landfills.

Judicial Review. Under CAA section 307(b)(1), judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 10, 2010. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of this rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20004, with a copy to the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

ASME American Society of Mechanical Engineers
ASTM American Society for Testing and Materials
BAMM Best Available Monitoring Methods
BOD_5 5-day biochemical oxygen demand
CAA Clean Air Act
CBI confidential business information
CEMS continuous emission monitoring system(s)
CERCLA Comprehensive Environmental Response, Compensation, and Liability Act
cf cubic feet
CFR Code of Federal Regulations
CH_4 methane
CO_2 carbon dioxide
CO_2e CO_2-equivalent
COD chemical oxygen demand
DOC Degradable organic carbon
EIA economic impact analysis
EO Executive Order
EPA U.S. Environmental Protection Agency
FK 5–1–12 dodecafluoro-2-methylpentan-3-one (or Novec™ 612)
GHG greenhouse gas
HCFC–22 chlorodifluoromethane (or $CHClF_2$)
HFC–23 trifluoromethane (or CHF_3)
HFCs hydrofluorocarbons
HFEs hydrofluorinated ethers
ICR information collection request
kg kilograms
MSHA Mine Safety and Health Administration
MSW municipal solid waste
N_2O nitrous oxide
NAICS North American Industry Classification System
NPDES National Pollution Discharge Elimination System
NTTAA National Technology Transfer and Advancement Act of 1995
OMB Office of Management and Budget
PFCs perfluorocarbons
QA/QC quality assurance/quality control
RCRA Resource Conservation and Recovery Act
RFA Regulatory Flexibility Act
RIA regulatory impact analysis
SBREFA Small Business Regulatory Enforcement Fairness Act
scf standard cubic feet
scfm standard cubic feet per minute
SF_6 sulfur hexafluoride
TSCA Toxic Substances Control Act
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995
VOC volatile organic compound(s)

Table of Contents

I. Background

A. Organization of This Preamble

This preamble consists of five sections. The first section provides a brief history of 40 CFR part 98 and describes the purpose and legal authority for today's action.

The second section of this preamble summarizes the revisions made to the general provisions in 40 CFR part 98, subpart A and outlines the specific requirements for the four new source categories being incorporated into 40 CFR part 98 by this action. It also describes the major changes made to these source categories since proposal and provides a brief summary of significant public comments and EPA's responses on issues specific to each source category.

The third section of this preamble summarizes and provides our rationale for the decisions not to include two source categories as distinct subparts in 40 CFR part 98 and not to include reporting requirements for one additional proposed source category under 40 CFR part 98 at this time.

The fourth section of this preamble provides the summary of the cost impacts, economic impacts, and benefits of the final rule and discusses comments on the regulatory impacts analyses for the four additional source categories.

Finally, the last section discusses the various statutory and executive order requirements applicable to this rulemaking.

B. Background on the Final Rule

Today's action finalizes monitoring and reporting requirements for the following four source categories: magnesium production, underground coal mines, industrial waste landfills,[1] and industrial wastewater treatment. With today's action EPA has decided not to include ethanol production and food processing as distinct subparts. Lastly, EPA has made the final decision not to include any reporting requirements for suppliers of coal at this time.

These source categories were proposed on April 10, 2009 (74 FR 16448) as part of a larger rulemaking effort to establish a GHG reporting program for all sectors of the economy. This rulemaking was initiated by EPA in response to the fiscal year 2008 Consolidated Appropriations Act (Appropriations Act).[2] This Act authorized funding for EPA to develop and publish a rule "* * *to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States." An accompanying joint explanatory statement directed EPA to "use its existing authority under the Clean Air Act" to develop a mandatory GHG reporting rule.

EPA proposed 40 CFR part 98 on April 10, 2009 (74 FR 16448) and held two public hearings in April 2009. The public comment period ended on June 9, 2009. The final 40 CFR part 98 was signed by EPA's Administrator on September 22, 2009 and published in the **Federal Register** on October 30, 2009 (74 FR 56260). The October 2009 Final Rule, which became effective on December 29, 2009, included reporting requirements for facilities and suppliers in 31 subparts. The April 2009 proposal, however, included monitoring and reporting requirements for a further eleven source categories that were not finalized in the October 30, 2009 action. This action includes monitoring and reporting requirements for four of the eleven source categories (subpart T—Magnesium Production, subpart FF—Underground Coal Mines, subpart II—Industrial Wastewater Treatment, and subpart TT—Industrial Waste Landfills) that were proposed but not finalized in the October 30, 2009 action, and amends the general provisions for 40 CFR part 98, subpart A. This action also provides EPA's final decision not to include ethanol production and food processing as distinct subparts in 40 CFR part 98, as well as the final decision not to include suppliers of coal in 40 CFR part 98 at this time.[3]

During the comment period, EPA received a number of detailed comments on the proposal, including comments specific to the proposed subparts for ethanol production, food processing, underground coal mines, industrial waste landfills, industrial wastewater treatment, and suppliers of coal. EPA decided to delay finalizing the reporting requirements for these source categories to allow for additional time to review public comments, perform additional analysis, and consider modifications and alternatives to the proposed methodologies. Changes made to the proposed requirements and significant comments received during the public comment period for 40 CFR part 98, subparts FF, II, and TT are described in more detail in the discussions of the individual source categories included in Section II of this preamble.

Upon further consideration, EPA decided not to include distinct subparts for ethanol production and food processing in 40 CFR part 98 because these facilities will already be covered under the rule due to their aggregate emissions from all applicable source categories in the rule, such as stationary combustion, industrial wastewater, industrial waste landfills, miscellaneous use of carbonates, and any others that may apply. Moreover, EPA has also decided to not include coal suppliers in 40 CFR part 98 because the vast majority of emissions from combustion of coal in the United States is already covered by the rule through reporting by direct emitters. Further explanation of these decisions is provided in more detail in the discussions of the proposed individual source categories in Section III of this preamble.

Summaries of comments on other aspects of the reporting rule, such as the verification approach and selection of source categories, are included and were

[1] The industrial landfills source category was proposed with municipal solid waste landfills under 40 CFR part 98, subpart HH in the April 10, 2009 proposal (74 FR 16448). However, EPA has since decided to separate landfills into two subparts: subpart HH for municipal solid waste landfills (promulgated October 30, 2009 (74 FR 56374)) and subpart TT for industrial landfills.

[2] Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844, 2128. Congress reaffirmed interest in a GHG reporting rule, and provided additional funding, in the 2009 and 2010 Appropriations Acts (Consolidated Appropriations Act, 2009, Pub. L. 110–329, 122 Stat. 3574–3716 and Consolidated Appropriations Act, 2010, Pub. L. 111–117, 123 Stat. 3034–3408).

[3] The remaining four source categories included in the April 2009 proposal but not included here are being reproposed in Proposed Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems (75 FR 18608, April 12, 2010) and Proposed Mandatory Reporting of Greenhouse Gases: Additional Sources of Fluorinate GHGs (75 FR 18652, April 12, 2010).

responded to in the preamble to the October 2009 Final Rule (74 FR 56260, October 30, 2009) and in volumes 1 through 14 of "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments."

C. Legal Authority

EPA is finalizing 40 CFR part 98, subparts T, FF, II, and TT under the existing CAA authorities provided in CAA section 114. As discussed in detail in Sections I.C and II.Q of the preamble to the 2009 final rule (74 FR 56260, October 30, 2009), CAA section 114(a)(1) provides EPA with broad authority to require emissions sources, persons subject to the CAA, manufacturers of process or control equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. EPA may gather information for a variety of purposes, including for the purpose of assisting in the development of emissions standards under CAA section 111, determining compliance with implementation plans or such standards, or more broadly for "carrying out any provision" of the CAA. Section 103 of the CAA authorizes EPA to establish a national research and development program, including nonregulatory approaches and technologies, for the prevention and control of air pollution, including GHGs. As discussed in the proposal (74 FR 16448, April 10, 2009), among other things, data from magnesium production, underground coal mines, industrial wastewater treatment, and industrial waste landfills will inform decisions about whether and how to use CAA section 111 to establish new source performance standards (NSPS) for these four source categories, including whether there are any additional categories of sources that should be listed under CAA section 111(b). The data collected will also inform EPA's implementation of CAA section 103(g) regarding improvements in sector based nonregulatory strategies and technologies for preventing or reducing air pollutants.

II. Reporting Requirements for Magnesium Production, Underground Coal Mines, Industrial Wastewater Treatment, and Industrial Waste Landfills

A. Overview

40 CFR part 98 requires reporting of GHG emissions and supply from all sectors of the economy, including fossil fuel suppliers, industrial gas suppliers, and direct emitters of GHGs. It covers various GHGs, including carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), sulfur hexafluoride (SF_6), and other fluorinated compounds (*e.g.,* hydrofluoroethers (HFEs)). The rule requires that source categories subject to the rule monitor and report GHGs in accordance with the methods specified in the individual subparts. For a list of the specific GHGs to be reported and the GHG calculation procedures, monitoring, missing data procedures, recordkeeping, and reporting required by facilities subject to each of the four subparts included in today's action, *see* Section II.C through II.F of this preamble.

In order to meet the quality assurance and verification requirements of the rule, EPA is establishing an electronic reporting system to facilitate collection of data under this rule. All facilities that are covered under 40 CFR part 98, including those subject to the reporting requirements in 40 CFR part 98, subparts T, FF, II, and TT will use this data system to submit required data.

B. Summary of Changes to the General Provisions of 40 CFR Part 98

Today's action amends certain requirements in 40 CFR part 98, subpart A (General Provisions). These amendments are summarized in this section of the preamble and apply only to those subparts included in this action. Other than the changes to format discussed immediately below, none of the amendments change the general provisions applicable to those subparts already incorporated into 40 CFR part 98.

Changes to Format. On March 16, 2010, EPA published both a direct final rule and concurrent proposal (75 FR 12451 and 75 FR 12489) that made minor changes to the format of several sections of the general provisions to accommodate the addition of new subparts in the future in a simple and clear manner. The changes included converting into a tabular format the lists of source categories and supply categories that are affected by the October 2009 final rule. The lists, which were originally embedded in three paragraphs of 40 CFR part 98, subpart A (40 CFR 98.2(a)), were moved to three new tables in 40 CFR part 98, subpart A. Each table also indicated the applicable first reporting year for each source and supply category. For source and supply categories included in the 2009 final rule, the first reporting year remains 2010. As a concurrent harmonizing change, all references to applicable subparts (*e.g.,* "40 CFR part 98 subparts C through JJ") were replaced by references to the appropriate source or supply category table. Other changes included updating the language for the schedule for submitting reports and calibrating equipment to recognize that subparts that may be added in the future would have later deadlines. These revisions did not change the requirements for subparts included in the 2009 final rule.

The direct final rule notice also stated the direct final rule would become effective May 17, 2010, unless any adverse comments were received by April 15, 2010. If such comments were received, EPA would withdraw the direct final rule and finalize the proposal at a later date. The Agency received two comments that could be construed as adverse and subsequently withdrew the direct final rule on April 30, 2010 (75 FR 22699).

EPA received two sets of ostensibly adverse comments, however neither addressed any of the specific formatting changes EPA made to the General Provisions in the direct final rule. Rather, the commenters focused on portions of the regulatory text that remained unchanged from the original final rule that was published on October 30, 2009 (74 FR 56260). Both raised concerns with sentences that remained the same as they were in the October 2009 final rule and were not related to the formatting changes proposed on March 16, 2010. Specifically, both commenters objected to the reporting of biogenic emissions required under 40 CFR part 98, section 98.3(C)(4)(i) and (ii). EPA did not actually change that requirement from the October 2009 rule but rather revised the reference in the paragraph from "source categories in subparts C through JJ" to "source categories listed in Table A–3 and Table A–4 of this subpart" to reflect the proposed reformatting from lists of subparts to tables.

One of the commenters also objected to the schedule for reporting described in 98.33(b)(2). Again, EPA did not change that requirement at all. Instead, the Agency inserted the phrase "and becomes subject to the rule in the year that it becomes operational" to the sentence that reads "for a new facility or supplier that begins operation on or after January 1, 2010 and becomes subject to the rule in the year it becomes operational, reporting emissions beginning with the first operating month and ending on December 31 of that year." That additional phrase makes it clear that reporters must meet the applicability requirements for each

source category before they are subject to any reporting requirements but does not actually amend the schedule for reporting itself.

Finally, one commenter objected to regulatory text in 98.3(i)(1) that requires calibration of flow meters and other devices. This specific requirement also remains unchanged from the 2009 final rule. Similar to the above amendment, EPA revised this paragraph not to change the requirements for sources covered by the October 2009 final rule, but rather to allow facilities that must report under any additional subparts to conduct any initial calibrations that are required by the newly published subparts during the first year that the subpart applies rather than in the year 2010. To do that, EPA changed the following sentence, "for facilities and suppliers that become subject to this part about April 1, 2010, the initial calibration shall be conducted on the date that data collection is required to begin" to "for facilities and suppliers that are subject to this part on January 1, 2010, the initial calibration shall be conducted by April 1, 2010. For facilities and suppliers that become subject to this part after April 1, 2010, the initial calibration shall be conducted by the date that data collection is required to begin."

In both cases, the comments received did not address any of the changes EPA proposed to make to the General Provisions. As a result, EPA is finalizing those proposed minor amendments to accommodate the addition of new subparts in this rulemaking. The additional changes to 40 CFR part 98, subpart A discussed below reflect these changes (*i.e.,* revising Tables A–3 and A–4 instead of 40 CFR 98.2(a)(1), (2) or (4)). As explained above, the comments that could be construed as adverse related to parts of the regulatory text that remained unchanged from the 2009 final rule. If and when EPA decides to make any changes to any regulatory requirements set forth in the October 2009 final rule, including those highlighted in the comments above, the Agency will initiate a separate notice and comment process.

Changes to Applicability. Facilities containing magnesium production, industrial waste landfills, and/or industrial wastewater treatment, are subject to 40 CFR part 98 if they emit 25,000 metric tons CO_2-equivalent (CO_2e) or more per year in combined emissions from combustion units, miscellaneous uses of carbonate, ferroalloy production, glass production, hydrogen production, iron and steel production, lead production, pulp and paper manufacturing, zinc production, magnesium production, industrial wastewater treatment, and industrial waste landfills, or if they are required to report under 98.2(a)(1). In today's action, EPA is making revisions to Table A–4 in 40 CFR part 98, subpart A from that included in the direct final rule and accompanying proposal to include the source categories: Magnesium production, industrial wastewater treatment, and industrial waste landfills.

Underground coal mines that are subject to quarterly (or more frequent) sampling of ventilation systems by the Mine Safety and Health Administration (MSHA) are subject to 40 CFR part 98 regardless of the actual facility emissions. In today's action, we are making revisions to Table A–3 from that included in the direct final rule and accompanying proposal to include the underground coal mine source category.

Changes to the Reporting Schedule. Facilities with existing magnesium production, underground coal mines, industrial wastewater treatment, and industrial waste landfills must begin monitoring GHG emissions on January 1, 2011 in accordance with the methods specified in 40 CFR part 98, subparts T, FF, II, and TT. Facilities must report the GHG emissions and associated verification data required under each of these subparts by March 31, 2012. Facilities with existing reporting requirements for the year 2010 are not required to collect the data required under 40 CFR part 98, subparts T, FF, II, and TT for the reporting year 2010 or report it in 2011.

EPA decided to require reporting of calendar year 2011 emissions for the four source categories finalized in today's action because the data are crucial to the timely development of future GHG policy and regulatory programs. In the fiscal year 2008 Appropriations Act, Congress requested that EPA develop this reporting program on an expedited schedule, and Congressional inquiries along with public comments reinforce that data collection for calendar year 2011 is a priority. Delaying data collection until calendar year 2012 would mean the data would not be received until 2013, which would likely be too late for many ongoing GHG policy and program development needs.

EPA received a number of comments on the April 2009 proposal from stakeholders expressing concerns that there would be insufficient time between the publication of a final rule and the date on which monitoring must begin. EPA concluded that the time period between the publication of this final action and the January 1, 2011 deadline for beginning monitoring for 40 CFR part 98, subparts T, FF, II, and TT is sufficient to allow facilities to implement the required monitoring methods, including calibrating and installing monitoring equipment. The monitoring requirements for each subpart included in today's action have not changed significantly from those requirements proposed in April 2009. Although facilities in some source categories will have to make emissions assessments to determine whether their facility exceeds the 25,000 metric tons CO_2e applicability threshold, EPA has concluded that there is ample time to complete this assessment. Many facilities affected by today's action will not need additional time to make emissions assessments because they will already be subject to monitoring and reporting emissions under other applicable subparts in 40 CFR part 98. For example, pulp and paper mills which may be required to report under 40 CFR part 98, subparts TT and II, are already required to report under 40 CFR part 98, subpart AA and any other applicable source categories if their emissions are more than 25,000 metric tons CO_2e per year. Furthermore, many of those facilities that are not subject to monitoring in 2010 will have already completed some assessments of their emissions from source categories included in the Octber 2009 Final Rule. For example, many industrial facilities will have already assessed their GHG emissions from combustion units for the 2010 reporting year. For these reasons, EPA concluded that the January 1, 2011 deadline should provide sufficient time for facilities to comply with the rule.

Best Available Monitoring Methods. In the October 2009 Final Rule, facilities had the option to use Best Available Monitoring Methods (BAMM) for the first quarter of the first reporting year. While facilities in the source categories included in today's action will not automatically be allowed to use BAMM for the first quarter of monitoring (January 1, 2011 to March 31, 2011), facilities will have the option to request the use of BAMM. The request must be submitted by October 12, 2010 and must contain the information specified in 40 CFR 98.3(d)(2)(ii). Specific information regarding the use of BAMM is included in the Monitoring and QA/QC Requirements section of each subpart for the source categories included in today's action. The use of BAMM for these source categories will not be approved beyond December 31, 2011. The only change to the general provisions, by virtue of inclusion of BAMM in each subpart, is to make it

clear that the automatic three month provision of 98.3 does not apply to these subparts.

For most facilities covered by the source categories in today's action, there are monitoring requirements that may not be typical operating procedure and therefore, monitoring equipment will need to be purchased and installed. In addition, per EPA's experience with the source categories finalized in 2009 final rule, there will likely be facilities with unique circumstances that will require some additional time to comply with the rule requirements. Therefore, EPA decided to allow facilities to request the use of BAMM for the first reporting year so that those that are not able to acquire, install, and calibrate the required monitoring equipment due to their unique circumstances may still comply with the rule.

Other Changes to 40 CFR part 98, subpart A. In today's action, we are also amending 40 CFR 98.6 (definitions) to add definitions for several terms used in 40 CFR part 98, subparts T, FF, II, and TT and to clarify the meaning of certain existing terms for purposes of 40 CFR part 98, subpart II.

We are also amending 40 CFR 98.7 (incorporation by reference) to include standard methods references in 40 CFR part 98, subparts FF, II, and TT.

C. Magnesium Production (40 CFR Part 98, Subpart T)

1. Summary of the Final Rule

Source Category Definition. Magnesium production and processing facilities are defined as any facility where magnesium metal is produced through smelting (including electrolytic smelting), refining, or remelting operations, or any site where molten magnesium is used in alloying, casting, drawing, extruding, forming, or rolling operations.

Facilities that meet the applicability criteria in the General Provisions (40 CFR 98.2(a)) summarized in Section II.B of this preamble must report GHG emissions.

GHGs to Report. Each magnesium production facility must report total emissions at the facility level for each of the following gases in metric tons of gas per year resulting from their use as cover gases or carrier gases in magnesium production or processing:

- SF_6.
- HFC–134a.
- FK 5–1–12.
- CO_2.
- Any other GHG as defined in 40 CFR part 98, subpart A (General Provisions) of the rule.

In addition, each facility must report GHG emissions for other source categories for which calculation methods are provided in the rule. For example, facilities must report CO_2, N_2O, and CH_4 emissions from each stationary combustion unit on site by following the requirements of 40 CFR part 98, subpart C (General Stationary Fuel Combustion Sources).

GHG Emissions Calculation and Monitoring. Owners or operators of magnesium production facilities must calculate emissions of each gas by monitoring the annual consumption of cover gases and carrier gases using one of three methods:

- Use a mass-balance approach that takes into account the following:

– *Decrease in Inventory:* The decrease in inventory of cover or carrier gases stored in containers from the beginning to the end of the year.

– *Acquisitions:* The amount of cover or carrier gas acquired through purchases or other transactions.

– *Disbursements:* The amount of cover or carrier gases disbursed to sources and locations outside the facility through sales or other transactions.

- Monitor the changes in the mass of individual containers as the gases are used.
- Monitor the mass flow of pure cover gas and carrier gas into the cover gas distribution system.

Data Reporting. In addition to the information required to be reported by the General Provisions (40 CFR 98.3(c)), reporters must submit additional data that are used to calculate GHG emissions. A list of the specific data to be reported for this source category is contained in 40 CFR part 98, subpart T.

Recordkeeping. In addition to the information required by the General Provisions (40 CFR 98.3(g)), reporters must keep records of additional data used to calculate GHG emissions. A list of specific records that must be retained for this source category is included in 40 CFR part 98, subpart T.

2. Summary of Major Changes Since Proposal

No major changes since proposal have been made to the magnesium production sector.

3. Summary of Comments and Responses

No comments specific to regulation of the magnesium production sector were received.

D. Underground Coal Mines (40 CFR Part 98, Subpart FF)

1. Summary of the Final Rule

Source Category Definition. This source category consists of active underground coal mines and any underground mines under development that have operational pre-mining degasification systems. An underground coal mine is a mine at which coal is produced by tunneling into the earth to a subsurface coal seam, where the coal is then mined with equipment such as cutting machines, and transported to the surface. Active underground coal mines are underground mines categorized by the MSHA as active and where coal is currently being produced or has been produced within the previous 90 days. This source category includes each ventilation well or shaft, and each degasification system well or shaft, and includes degasification systems deployed before, during, or after mining operations are conducted in a mine area.

This source category does not include abandoned (closed) mines, surface coal mines, post-coal mining activities (*e.g.,* storage or transportation of coal), or coalbed methane recovery from coal seams not associated with active underground coal mines.

Reporters must submit annual GHG reports for facilities that meet the applicability criteria in the General Provisions (40 CFR 98.2(a)(1)) summarized in Section II.B of this preamble.

GHGs to Report. For underground coal mines, report the following:

- Quarterly CH_4 liberation from ventilation and degasification systems.
- Quarterly CH_4 destruction for ventilation and degasification systems and resultant CO_2 emissions, if destruction takes place on-site.

In addition, each facility must report GHG emissions for other source categories for which calculation methods are provided in the rule. For example, facilities must report CO_2, N_2O, and CH_4 emissions from each stationary combustion unit on site by following the requirements of 40 CFR part 98, subpart C (General Stationary Fuel Combustion Sources).

GHG Emissions Calculation and Monitoring. For CH_4 liberated from mine ventilation air, facilities are to monitor CH_4 using either quarterly or more frequent sampling of CH_4 content and gas flow, or continuous emissions monitoring systems (CEMS).

For the quarterly sampling option, coal mine operators are required to either: (a) To obtain the results of the quarterly, or more frequent, testing that MSHA conducts, and use the results to calculate quarterly emissions, or (b) independently collect quarterly, or more frequent, samples of CH_4 released from the ventilation system(s), using MSHA procedures, have these samples analyzed for CH_4 composition, and use

the results to calculate quarterly emissions.

If operators use CEMS as the basis for emissions reporting, they must provide documentation on the process for using data obtained from their CEMS to estimate emissions from their mine ventilation systems.

For CH_4 liberated from degasification systems, facilities are to monitor CH_4 using either weekly sampling, or CEMS.

The option of collecting weekly samples includes both measurement of the total gas volume liberated (including that which is emitted or sold, used onsite, or otherwise destroyed (including by flaring)), along with measurements of CH_4 concentrations in gas volumes recovered or emitted. Under this option, facilities must determine weekly gas flow rates and CH_4 composition from these degasification wells and shafts, either on an individual well or shaft basis, or in aggregate at one or more centralized collection points. Methane composition could be determined either by submitting samples to a lab for analysis, or from the use of methanometers at the degasification well site(s) and/or one or more centralized collection point(s).

For the CEMS option, facilities must monitor either individual wellbores, or can monitor gas at points of aggregation, as long as emissions from all wells are addressed, and the methodology for calculating total emissions from all wells is documented.

For all systems with CH_4 destruction, CH_4 destruction is monitored through direct measurement of CH_4 flow to combustion devices with continuous monitoring systems. The resulting CO_2 emissions for onsite combustion devices without energy recovery (*i.e.,* flaring) are to be calculated from these monitored values.

Data Reporting. In addition to the information required to be reported by the General Provisions (40 CFR 98.3(c)), reporters must submit additional data that are used to calculate GHG emissions. A list of specific data to be reported for this source category is contained in 40 CFR part 98, subpart FF.

Recordkeeping. In addition to the records required by the General Provisions (40 CFR 98.3(g)), reporters must keep records of additional data that are used to calculate GHG emissions. A list of specific records that must be retained for this source category is contained in 40 CFR part 98, subpart FF.

2. Summary of Major Changes Since Proposal

The major changes in this rule since the original proposal are identified in the following list. The rationale for these and any other significant changes to 40 CFR part 98, subpart FF can be found below or in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Subpart FF: Underground Coal Mines."

- An option of using one or more CEMS to obtain data on mine ventilation systems was added.
- For CH_4 liberated from degasification systems, the requirement to monitor each well was removed. CEMS may be used to monitor aggregate CH_4 from more than one well, as long as CH_4 from all wells is monitored, and the methodology for estimating total emissions from all wells is documented.
- The requirement for continuous monitoring for total CH_4 liberation at degasification systems was removed. Degasification wells may be monitored with CEMS or through weekly sampling of all degasification wells, including gob gas vent holes and other degasification wells.

3. Summary of Comments and Responses

This section contains a brief summary of major comments and responses. EPA received many comments on this subpart covering numerous topics. EPA's responses to these significant comments can be found in the comment response document for underground coal mines in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Subpart FF: Underground Coal Mines."

Definition of Source Category

Comment: Several commenters stated that many operators currently recover liberated CH_4 for various purposes, including destruction, and therefore CH_4 that has been recovered is no longer an emission as it is not vented into the atmosphere. The commenters recommended that EPA not include recovered CH_4 in the reporting requirements.

Response: EPA agrees that CH_4 that has been recovered and combusted is not emitted. However, EPA does not agree with the commenter that recovered CH_4 should be excluded from the reporting requirements. Recovery projects at mines greatly reduce CH_4 emissions from this source. It is vital that EPA obtain the best information available about these practices for future policy analysis. In addition, since mines with CH_4 collection systems generally monitor the amount of CH_4 collected in these systems, this can provide an effective internal validation method for assessment of CH_4 generation within the mine. As such, data for mines with gas collection systems are also vitally important to better understand and improve estimates of CH_4 emissions from mines in general. EPA has taken the same approach for the reporting of recovered CH_4 from landfills under 40 CFR part 98, subpart HH.

Comment: Commenters suggested that EPA include abandoned mines in the source category definition. For existing abandoned mines whose operators can be identified from State or Federal records, they recommended that EPA require the installation of appropriate monitoring equipment. They also recommended that EPA make clear that the abandoned mine exception does not apply prospectively.

Response: For currently abandoned mines, EPA considered this emission source and determined that measuring and/or monitoring emissions from abandoned mines would be difficult at this time, since there are currently no robust facility-level monitoring methods available to measure fugitive emissions from abandoned mines. Further, in many cases, EPA concluded that it would be difficult to identify owners of abandoned mine sites, *i.e.*, it would be difficult to identify the responsible parties to monitor and report. Finally, even where the site owner is known, these sites are often unmanned, remote, and lack a source of nearby power, making it burdensome to monitor emissions. EPA may reconsider including abandoned mines in this rule should additional information become available demonstrating that monitoring is feasible.

With regard to the "once in, always in" provision of the proposed reporting rule, a mine covered by the rule that later ceases coal production would need to continue reporting until its emissions fell below the levels specified in the provisions to cease reporting in 40 CFR part 98, subpart A. Mines continue to emit CH_4 after mining activities have ceased and therefore it is prudent to continuing monitoring emissions until they are below the threshold.

Comment: For surface mines, while commenters recognized that existing monitoring methods presently may not be robust, some commenters consider the use of existing methods to be preferable to excluding this source of emissions. They suggested that EPA consider requiring these methods for surface mines, adjusting emissions figures appropriately to account for uncertainty.

Response: EPA determined that monitoring emissions from surface mines would be challenging, since there are currently no robust facility-level monitoring methods to measure fugitive

CH_4 emissions from surface mines at this time. Measuring fugitive emissions at specific locations would not adequately capture the emissions from the entire mine, would be expensive and resource-intensive, and difficult for mine operators to implement on a periodic basis. EPA may reconsider including surface mines in this rule should additional information become available demonstrating that monitoring is feasible.

Comment: One commenter expressed concern that even the most accurate instrumentation will have accuracy difficulties based upon varying conditions, calling into question the accuracy of the measurements. Because of this, they recommended that degasification wells be exempt from the rule.

Response: EPA does not agree with the commenter that CH_4 degasification wells should be exempt. While the factors mentioned in the comment may indeed influence the accuracy of measurement of CH_4 from degasification wells, EPA considered this issue when including this source category, and determined that the collection of facility-level data at these mines is still of value to EPA because it provides valuable information for characterizing CH_4 emissions from underground coal mining options. This information is also of value to mine owners, because those facilities reporting under the rule will have stringent monitoring systems in place that will allow them to quantify the mitigation value of destroying CH_4 from their degasification systems.

Reporting Threshold

Comment: One commenter recommended that establishing the reporting threshold at a level of 100,000 metric tons CO_2e/yr instead of the proposed threshold of MSHA quarterly reporting would ensure accurate reporting while sparing small mines and manufacturers from the burdens of compliance.

Response: In developing the threshold for active underground coal mines, EPA considered various emissions-based thresholds, and determined that reporting should be required for those coal mines for which CH_4 emissions from the ventilation system are sampled quarterly by MSHA. MSHA conducts quarterly testing of CH_4 concentration and flow at mines emitting more than 100,000 cubic feet of CH_4 per day. This threshold was selected because subjecting underground mine operators to a new emissions-based threshold would be unnecessarily burdensome and perhaps confusing, since these mines are already subject to MSHA regulations and therefore would be able to comply with this rule without having to separately determine applicability.

Selection of Proposed GHG Emissions Calculation and Monitoring Methods

Comment: Several commenters recommended that CEMS should be allowed as a monitoring method, but not required, for both ventilation and degasification systems. In particular, they claim that continuous monitoring of CH_4 emissions and air flow rates for all degasification wells and degasification vent holes is not feasible for several reasons. The remote location, unavailability of power, inaccessibility, susceptibility to vandalism, and the relatively short longevity of many degasification and vent holes renders continuous monitoring impractical in many cases.

One commenter generally agreed with EPA's approach to underground coal mine CH_4 monitoring, but urged EPA to require the use of CEMS for ventilation systems in addition to degasification systems.

Most commenters stated that the procedures and quarterly sampling are sufficient as an option for GHG emissions reporting from ventilation of underground coal mines if such data can be received from MSHA. However, some expressed concern that MSHA does not normally report such data back to mines unless requested.

Response: For monitoring CH_4 liberation from underground coal mines, EPA considered several approaches: Engineering approaches whereby default emission factors would be applied to total annual coal production; periodic sampling of CH_4; daily sampling of CH_4; and the use of CEMS. EPA selected periodic sampling as its minimum requirement because the cost burden of purchasing, installing and maintaining CEMS, and the cost of maintaining a more frequent sampling program were not justifiable under present circumstances relative to the greater measurement accuracy achieved.

We agree that CEMS should be allowed, but not required, to monitor CH_4 liberation from ventilation and degasification systems, and have changed the rule accordingly. For systems where recovered CH_4 is sold, destroyed, or used on site, EPA determined that such systems are already installed on most wells, and CEMS are required.

For monitoring at ventilation systems, EPA has concluded that quarterly sampling is sufficient as an option for GHG monitoring from ventilation systems. Quarterly sampling was chosen for ventilation systems because that is the frequency of sampling conducted by MSHA. Greater frequency would provide more accurate data; however, the increased burden would outweigh the benefits of improved accuracy for the purposes of this reporting rule at this time. The quarterly option represents a balance between burden on reporters and accuracy of data.

EPA is aware that MSHA does not normally report sampling data back to mines unless requested. However, since MSHA is conducting sampling that provides data useful to this rule, EPA determined that it should include use of the data collected by MSHA, by facilities that do obtain this data from MSHA, as an option under this rule. Under this option, facilities would input MSHA data into the emissions calculations required under this rule. Mines that do not obtain this data from MSHA must conduct sampling as specified in the rule.

EPA added the use of CEMS at ventilation systems as an option for monitoring. CEMS are not currently widely implemented at ventilation systems, but mines evaluating the feasibility of mitigation, abatement, or use of ventilation air methane might install CEMS to monitor methane, and this monitoring would be allowed under this rule.

For monitoring at degasification systems, it was determined that weekly sampling is sufficient. Most degasification systems conduct continuous monitoring and where this type of monitoring is already in place, it should be used for purposes of this rule. Based on interviews with a number of mine operators, for many of those sites where continuous monitoring is not being conducted (primarily for gob gas vent holes) degasification wells are monitored at least weekly. Moreover, EPA determined that emissions do not generally vary much from week to week for mine degasification systems, so the weekly measurements would provide sufficient accuracy.

Cost Data

Comment: Many commenters noted that EPA did not appropriately take into consideration the full costs of compliance associated with the proposed rule, particularly those associated with the installation of CEMS on all degasification wells and vent holes. They noted that both the number of impacted wells and vent holes, as well as the costs associated with implementing such systems, was probably underestimated.

Response: Based on these comments and further analysis, EPA reevaluated its cost assessment, revised its costs,

and on the basis of those revised costs, modified the monitoring requirements.

EPA reassessed the number of degasification wells and vent holes that would likely be associated with mines required to report under the rule. This resulted in a substantially larger estimate of the number of degasification wells that would be required to install CEMS systems in compliance with the originally proposed requirements, with an associated greater incremental cost burden.

EPA determined that implementing CEMS on some degasification wells could be quite costly, and in many cases, would be difficult and/or impractical due to remote location, unavailability of power, inaccessibility, susceptibility to vandalism, and the relatively short longevity of many degasification and vent holes. As a result, EPA included consideration of the costs associated with weekly or more frequent sampling, as an alternative to the installation of CEMS, to address this potential burden. For more detailed information on costs, please *see* Section 4 of the Economic Impact Analysis (EIA) found in docket EPA–OAR–2008–0508.

E. Industrial Wastewater Treatment (40 CFR Part 98, Subpart II)

1. Summary of the Final Rule

Source Category Definition. This source category applies to anaerobic processes used to treat industrial wastewater and wastewater treatment sludge only at pulp and paper mills, food processing facilities, ethanol production facilities, and petroleum refineries. It does not include anaerobic processes used to treat wastewater and wastewater treatment sludge at other industrial facilities. It does not include municipal wastewater treatment plants or separate treatment of sanitary wastewater at industrial facilities. It does not include oil/water separators. This source category consists of the following: Anaerobic reactors, anaerobic lagoons, anaerobic sludge digesters, and biogas destruction devices.

Facilities that meet the applicability criteria in the General Provisions (40 CFR 98.2(a)) summarized in Section II.B of this preamble must report GHG emissions.

GHGs To Report. Operators of anaerobic processes used to treat industrial wastewater and industrial wastewater treatment sludge at the above noted facilities must report the following:

- The amount of CH_4 generated, recovered, and emitted from treatment of industrial wastewater using anaerobic lagoons or anaerobic reactors.
- The amount of CH_4 recovered and emitted from anaerobic sludge digesters.
- The amount of CH_4 destroyed by and emitted from biogas collection systems and destruction devices.

Operators of anaerobic wastewater treatment sludge digesters are not required to report the amount of CH_4 generated. It is EPA's understanding that all anaerobic sludge digesters are designed for CH_4 recovery and are therefore not expected to emit CH_4 directly from the digester apparatus. Further, this rule requires operators of anaerobic sludge digesters to report the amount of CH_4 recovered and emitted from the recovery system. Therefore, all CH_4 that is generated in the anaerobic sludge digester is already accounted for in the amount of CH_4 recovered and emitted from the recovery system. For this reason, a separate calculation and report of the amount of CH_4 generated is not necessary.

GHG Emissions Calculation and Monitoring. For each anaerobic wastewater treatment process, facilities must calculate the mass of CH_4 generated using the following inputs and data:

- Volume of wastewater sent to an anaerobic treatment process.
- Average concentration of chemical oxygen demand (COD) or 5-day biochemical oxygen demand (BOD_5) of wastewater entering an anaerobic treatment process.
- Maximum CH_4 producing potential of wastewater (0.25 for COD, 0.6 for BOD_5).
- CH_4 conversion factor for the type of wastewater treatment process used.

For each anaerobic process (such as a reactor, lagoon, or sludge digester) from which biogas is recovered, covered facilities must calculate the mass of CH_4 recovered using the following inputs and data:

- Cumulative volumetric flow of biogas for the monitoring period.
- Average CH_4 content of the biogas.
- Temperature, pressure, and moisture content at which flow is measured, as needed to accurately calculate biogas flow and CH_4 content.

For each anaerobic process (such as reactor, lagoon, or sludge digester) from which biogas is recovered, covered facilities must calculate the mass of CH_4 emitted using the following inputs and data:

- Mass of CH_4 recovered.
- Collection efficiency for the anaerobic process, based on the type of anaerobic process.
- Destruction efficiency of the biogas collection and combustion system.
- Fraction of hours the destruction device was operating in the reporting year.

Data Reporting. In addition to the information required to be reported by the General Provisions (40 CFR 98.3(c)), facilities must submit additional data that are used to calculate or verify GHG emissions. A list of the specific data to be reported for this source category is contained in 40 CFR part 98, subpart II.

Recordkeeping. In addition to the records required by the General Provisions (40 CFR 98.3(g)) facilities must keep records of additional data used to calculate GHG emissions. A list of specific records that must be retained for this source category is included in 40 CFR part 98, subpart II.

2. Summary of Major Changes Since Proposal

The major changes since proposal are identified below. The rationale for these and any other significant changes can be found below or in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Subpart II: Industrial Wastewater Treatment," and "Technical Support Document for Industrial Wastewater Treatment."

- The source category has been renamed Industrial Wastewater Treatment and the applicability of this subpart has been clarified. Only petroleum refineries, and ethanol production, food processing, and pulp and paper facilities that meet the requirements of 98.2(a)(2) are required to report CH_4 emissions from anaerobic processes used to treat industrial wastewater and industrial wastewater treatment sludge and biogas destruction devices. Separate treatment of sanitary wastewater at industrial facilities is not included in the applicability, nor are facilities that do not employ the wastewater treatment processes listed in the source definition (*i.e.,* those that employ only aerobic or anoxic processes are not required to report).
- The requirement to report emissions from oil/water separators at petroleum refineries has been removed. EPA expects no direct emissions of CO_2 or other GHG from these oil/water separators.
- Because petrochemical facilities are not known to employ anaerobic wastewater treatment, this sector has been removed from the final version of the rule.
- For ease of reporting, EPA revised the regulation to allow for either continuous or weekly monitoring of biogas CH_4 concentration. Facilities may use either installed or portable monitors to measure the CH_4 concentration. Further, EPA added BOD_5 as an

alternative to measuring COD to determine the organic load of influent to anaerobic wastewater treatment systems.

3. Summary of Comments and Response

This section contains a brief summary of major comments and responses. EPA received many comments on this subpart covering numerous topics. EPA's responses to these comments can be found in the comment response document for industrial wastewater treatment in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Subpart II: Industrial Wastewater Treatment."

Comment: Many commenters expressed confusion about which facilities were required to report emissions from wastewater treatment systems. Some commenters requested EPA clarify the definitions of aerobic and anaerobic wastewater treatment, while others were uncertain whether only the industries explicitly mentioned in the rule were required to report. Many commenters also requested that EPA clarify whether the rule applied to centralized municipal wastewater treatment plants and treatment of sanitary wastewater at industrial facilities.

Response: EPA revised 40 CFR 98.351 to clarify that only ethanol production, food processing, petroleum refining, and pulp and paper manufacturing facilities must report wastewater treatment system emissions if they both meet the requirements of 40 CFR 98.2 (a)(1) or (2) and operate an anaerobic process to treat industrial wastewater or industrial wastewater treatment sludge.

With regard to anaerobic processes covered by the rule, EPA revised 40 CFR 98.350 to state explicitly that facilities are only required to report emissions for the following: anaerobic reactors, anaerobic lagoons, anaerobic sludge digesters, and biogas destruction devices. To further clarify the scope of 40 CFR part 98, subpart II, EPA has removed emission factors for aerobic processes used to treat industrial wastewater from Table II–1 of 40 CFR part 98, subpart II because these processes are not covered by the reporting rule.

EPA agrees with commenters that it is appropriate to exclude centralized domestic or municipal wastewater treatment plants from 40 CFR part 98, as was the case in the proposed rule. EPA continues to exclude municipal wastewater treatment plants from the final rule, and has retitled 40 CFR part 98, subpart II as Industrial Wastewater Treatment to clarify the applicability of this subpart.

EPA also agrees with commenters that it is appropriate to exclude separate treatment of sanitary wastewater at industrial facilities from 40 CFR part 98. Most such sanitary treatment plants are much smaller than municipal wastewater treatment plants and few use anaerobic treatment. As a result, EPA explicitly excluded these systems from 40 CFR part 98; however, anaerobic processes used to treat combined industrial and sanitary wastewater are covered by the rule.

Comment: Multiple commenters objected to the inclusion of emissions from petroleum refinery oil/water separators in the rule. Some argued that the GHG emissions from these devices would be insignificant. Others asserted that the GHG emissions calculations were unsupported and that this subpart was the only one to consider the atmospheric conversion of volatile organic compounds (VOCs) to CO_2 in the calculation of GHG emissions.

Response: In the proposed rule, EPA included a method to calculate CO_2 emissions that indirectly come from VOCs from petroleum refinery oil/water separators. EPA agrees with commenters that this requirement should be removed because this is the only source category to consider and require reporting of the conversion of VOCs to CO_2 in the atmosphere. The purpose of this rule is to collect direct GHG emissions data from downstream sources including industrial wastewater treatment. Therefore we are not collecting data from downstream sources on indirect emissions such as VOCs that can convert to CO_2 once in the atmosphere. Please *see* "Technical Support Document for Industrial Wastewater Treatment" for more detailed information on this issue. While EPA is not requiring the reporting of CO_2 resulting from VOC emissions at this time, we understand that these emissions may be important and we may revisit this reporting requirement in the future.

Comment: EPA received many comments recommending that wastewater treatment be considered a *de minimis* source. Some argued that wastewater treatment contributes an extremely small percentage of emissions compared to certain sectors' process emissions. Others contended that the burden of determining the small amount of wastewater treatment emissions was not warranted.

Response: EPA disagrees that reporting of wastewater treatment emissions should be excluded from the rule. Despite the comparatively small amount of GHG emissions from wastewater treatment nationally, emissions at individual facilities could be significant. We note that the source categories required to report are industries that both have the potential to exceed the reporting threshold, and have high levels of BOD or COD in their wastewater and frequently employ anaerobic treatment operations. *See* the Wastewater Treatment Technical Support Document (EPA–HQ–OAR–2008–0508–035). These two conditions result in the opportunity for increased GHG emissions. EPA has minimized the overall reporting burden by focusing the rule requirements on those treatment systems with the highest likelihood of generating GHG emissions exceeding the reporting threshold. In light of the potential significance of the emissions, lack of facility specific data, and revisions made to the reporting requirements in response to comments, we find that the burden on facilities is justified.

Given this reporting rule is aimed at collecting data to inform a range of future policies and programs it is important to understand the entirety of a facility's emissions. Therefore, requiring facilities in the included industry sectors to report wastewater treatment emissions, even though they may result in only a small portion of a facility's overall emissions, will allow each reporting facility to estimate their total emissions more accurately.

Comment: Many commenters requested additional flexibility in the rule requirements. Some requested the ability to use BOD instead of COD to calculate the organic content of the wastewater they treat in anaerobic processes. Others requested changes in sampling frequency for both biogas and wastewater.

Response: To reduce the reporting burden, EPA has revised the rule to allow for the use of either COD in conjunction with Equation II–1 of the rule or BOD_5 in conjunction with Equation II–2 of the rule for the calculation of CH_4 generation. EPA does not expect that this will effect the accuracy of the estimate of the annual mass of CH_4 generated at the facility.

EPA also revised the language regarding sampling of wastewater to require facilities to collect a flow-proportional composite sample (either constant time interval between samples with sample volume proportional to stream flow, or constant sample volume with time interval between samples proportional to stream flow). Facilities are required to collect a minimum of four sample aliquots per 24-hour period and to composite the aliquots for analysis. This requirement provides for greater certainty that the collected

sample represents the wastewater influent to the anaerobic wastewater treatment process, without imposing unnecessary burden on reporters.

In response to comments, EPA considered revising the proposed language of 40 CFR 98.354 to clarify how facilities might meet the stated requirement for the collection of grab samples or time-weighted composite samples. EPA considered allowing facilities to collect grab samples if the wastewater influent to the anaerobic wastewater treatment process represents the discharge from a well-mixed wastewater storage unit (tank or pond), such that the COD or BOD_5 concentration of the waste stream does not vary in a 24-hour period. Similarly, EPA considered allowing facilities to collect time-weighted composite samples if the flow rate of the wastewater influent to the anaerobic wastewater treatment process does not vary more than ±50 percent of the mean flow rate for a 24-hour sampling period. However, establishing that these conditions are met would require the facility to collect more samples than the proposed requirement to collect flow-weighted composite samples. Thus we did not include these sampling approaches in the final rule.

The final rule establishes differing requirements for the frequency of monitoring biogas flow and biogas CH_4 concentration. EPA expects that facilities that recover biogas will have existing gas flow meters, and is therefore requiring continuous monitoring of biogas flow from these facilities. EPA has revised the rule to allow either continuous or weekly monitoring of biogas CH_4 concentration. If a facility has equipment that continuously monitors CH_4 concentration, the facility must use this equipment to determine the CH_4 concentration in the recovered biogas. If a facility does not currently monitor biogas CH_4 concentration, they must use either installed or portable equipment to monitor the CH_4 concentration at least once a week. Once a week means once each calendar week, with at least three days between measurements. Weekly monitoring provides an adequate number of samples to evaluate the variability and uncertainly associated with CH_4 generation. Less frequent monitoring would result in greater uncertainty and would not significantly reduce the costs compared to weekly monitoring.

Some gas flow meters and gas composition meters automatically compensate for temperature, pressure, and moisture content. EPA revised the equations in 40 CFR part 98, subpart II so that facilities that use automatically compensated meters are not required to measure temperature, pressure and moisture content. Facilities that operate meters that are not automatically compensated must measure these parameters as specified in 40 CFR 98.354.

Some facilities, particularly food processing facilities, may not operate their wastewater treatment plants all year round. EPA clarified that wastewater monitoring requirements apply when the anaerobic wastewater treatment process is operating. Further, biogas methane concentration monitoring is only required in weeks when the cumulative biogas flow measured as specified in 40 CFR 98.354(g) is greater than zero.

Comment: Many commenters argued that it would be unduly burdensome and costly to require facilities to monitor influent to wastewater treatment systems. Some stated that their influent often consists of multiple phases, making measurement of wastewater organic content (BOD_5 or COD) difficult. Others contended that since effluent concentrations and flow are already measured for the purposes of National Pollutant Discharge Elimination System (NPDES) compliance, EPA should allow facilities to use engineering calculations and effluent measurements to calculate GHG emissions.

Response: The rule requires that flow and BOD_5 or COD be monitored at the location of influent to the anaerobic treatment process. EPA disagrees that facilities should be allowed to use the flow and organic loading of treated effluent to estimate CH_4 generation. CH_4 generation is a function of the organic load *into* the treatment system. If facilities used measured treated effluent organic load, they would need to back-calculate the influent (untreated) load. This approach would require EPA to describe all possible treatment scenarios, which would make the rule cumbersome and overly complex. Facilities would be required to use complex and burdensome methodologies to back-calculate the influent load.

Further, influent monitoring gives the most accurate determination of GHG emissions because it captures the inherent variability of the wastewater. In contrast, treated effluent characteristics typically have lower variability because high and/or variable influent concentrations have been reduced by treatment.

EPA also disagrees that monitoring the influent to the anaerobic process would be difficult because it consists of multiple phases. EPA has revised 49 CFR 98.354(b) of the rule to clarify that flow and BOD_5 or COD concentration must be monitored following all preliminary and primary treatment steps (*e.g.,* after grit removal, primary clarification, oil-water separation, dissolved air flotation, or similar solids and oil separation processes). Such preliminary and primary treatment sufficiently removes the non-aqueous phases (oil, foam, suspended solids) that the wastewater stream that can be analyzed for BOD_5 and COD without undue burden.

EPA disagrees that the cost of monitoring would be an undue burden on facilities. The final rule continues to require facilities to collect and analyze samples of anaerobic treatment process influent no less than once per week. Weekly monitoring provides an adequate number of samples to evaluate the variability and uncertainty associated with CH_4 generation. Less frequent monitoring would result in greater uncertainty and would not significantly reduce the costs compared to weekly monitoring.

EPA has determined that the sampling methods contained in the rule are not unduly burdensome and still result in an accurate estimate of GHG emissions from industrial wastewater treatment processes for the purpose of this rulemaking.

F. Industrial Waste Landfills (40 CFR Part 98, Subpart TT)

1. Summary of the Final Rule

Source Category Definition. This source category consists of industrial waste landfills whose total landfill design capacity is greater than or equal to 300,000 metric tons and that accepted waste on or after January 1, 1980.

This source category does not include Resource Conservation and Recovery Act (RCRA) Subtitle C or Toxic Substances Control Act (TSCA) hazardous waste landfills, construction and demolition landfills, or landfills that only receive inert waste materials, such as coal combustion residue (*e.g.,* fly ash), cement kiln dust, rocks and/or soil, glass, non-chemically bound sand (*e.g.,* green foundry sand), clay, gypsum, pottery cull, bricks, mortar, cement, furnace slag, refractory material, or plastics.

Facilities that meet the applicability criteria in the General Provisions (40 CFR 98.2(a)) summarized in Section II.B of this preamble must report GHG emissions.

GHGs to Report. For industrial waste landfills, facilities must report:

• Annual CH_4 generation and CH_4 emissions from the industrial waste landfill.

• Annual CH_4 recovered (for landfills with gas collection and destruction systems).

GHG Emissions Calculation and Monitoring. All facilities must ascertain annual modeled CH_4 generation based on:

• Measured or estimated values of historic annual waste disposal quantities; and

• Appropriate values for model inputs (*i.e.,* degradable organic carbon (DOC) fraction in the waste, CH_4 generation rate constant). Default parameter values are specified for certain industries and for industrial waste generically.

Facilities that do not collect and destroy landfill gas must adjust the annual modeled CH_4 generation to account soil oxidation (CH_4 that is converted to CO_2 as it passes through the landfill cover before being emitted) using a default soil oxidation factor. The resulting value must be reported and represents both CH_4 generation (corrected for oxidation) and CH_4 emissions.

Facilities that collect and destroy landfill gas must calculate the annual quantity of CH_4 recovered and destroyed based on continuous monitoring of landfill gas flow rate, and continuous or weekly monitoring of CH_4 concentration, temperature, pressure, and moisture of the collected gas prior to the destruction device.

Those facilities that collect and destroy landfill gas must then calculate CH_4 emissions in two ways and report *both* results. Emissions must be calculated by:

1. Subtracting the measured amount of CH_4 recovered from the modeled annual CH_4 generation (with adjustments for soil oxidation and destruction efficiency of the destruction device) using the equations provided; and

2. Applying a gas collection efficiency to the measured amount of CH_4 recovered to "back-calculate" CH_4 generation, then subtracting the measured amount of CH_4 recovered (with adjustments for soil oxidation and destruction efficiency of the destruction device) from the back-calculated CH_4 generation using the equations provided. A default collection efficiency of 75 percent is specified, but landfills should use a collection efficiency that takes into account collection system coverage, operation, and landfill cover materials.

Data Reporting. In addition to the information required to be reported by the General Provisions (40 CFR 98.3(c)), reporters must submit additional data that are used to calculate GHG emissions. A list of the specific data to be reported for this source category is contained in 40 CFR part 98, subpart TT.

Recordkeeping. In addition to the records required by the General Provisions (40 CFR 98.3(g)), reporters must keep records of additional data used to calculate GHG emissions. A list of specific records that must be retained for this source category is included in 40 CFR part 98, subpart TT.

2. Summary of Major Changes Since Proposal

The major changes since proposal are identified in the following list. The rationale for these and any other significant changes can be found below or in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Subpart TT: Industrial Waste Landfills."

• A number of provisions were added to focus on industrial waste landfills that have a potential to generate significant quantities of methane rather than all landfills. These provisions include an exemption for landfills that did not accept any waste after January 1, 1980, an exemption of landfills with a total landfill design capacity of less than 300,000 metric tons, and an exemption for landfills that only receive inert waste materials.

• In addition to direct mass measurements for determining waste quantities for current reporting years, we also allow volume measurements, mass balance procedures, or number of truck loads.

• Additional model defaults for industrial waste are included in the final rule and additional methods are provided to estimate DOC content of industrial solid waste streams.

• For landfills with landfill gas recovery, all of the changes that were incorporated in the final 40 CFR part 98, subpart HH rule (allowing weekly sampling and direct flame ionization methods) are also included in this final rule for industrial waste landfills (by cross-referencing the final requirements in 40 CFR part 98, subpart HH). For additional details regarding the changes in the landfill gas recovery monitoring requirements, *see* the final preamble for the 40 CFR part 98, subpart HH [Municipal Solid Waste Landfills] rule at 74 FR 56336.

3. Summary of Comments and Responses

This section contains a brief summary of major comments and responses. EPA received many comments on this subpart covering numerous topics. EPA's responses to these significant comments can be found in the comment response document for industrial waste landfills in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Subpart TT: Industrial Waste Landfills."

Definition of Source Category

Comment: Many commenters stated that landfills containing inert industrial wastes should not be subject to this proposed rule because inert wastes do not generate methane via anaerobic processes. Inert wastes, according to various commenters, include: construction and demolition waste, coal combustion residue monofills, geothermal filter cake waste landfills, waste rock landfills at coal mines, plastics, soils from construction and other site activities, hazardous waste landfills, solid waste management units (SWMUs) and non-hazardous landfills located at refineries, agricultural waste landfills associated with sugar mills, pottery cull, gypsum, clays, green sand, resin sand, refractory, slag, carbon and graphite manufacturing byproducts.

Several commenters stated that the rule would be very burdensome for industrial waste landfills with inert waste streams and that EPA has not sufficiently justified its decision to make all industrial waste landfills, regardless of typical byproduct waste characteristics, meet the provisions proposed.

Rather than listing specific exclusions, several commenters stated that EPA should do as suggested by the proposed rule and limit the requirements of the rule to landfills located at food processing, pulp and paper and ethanol production facilities which are known for methane gas generation; several commenters also included petroleum refineries in this list. One commenter suggested that ethanol production facilities should not be required to report landfill emissions because emissions from landfills at these facilities are so small.

A number of other exemptions were suggested by different commenters, including:

• Exempt inactive landfills, from which emissions are small.

• Exempt facilities that are not required to monitor methane or install and operate any methane control facilities under State permitting in order to keep the requirements simple and not overly burdensome.

• Exempt on-site industrial waste landfills that have been closed under RCRA because they have little or no

potential for air emissions and would create an unnecessary compliance burden.

Response: We agree that there will be negligible methane emissions from landfills that contain only inert waste materials because they do not have organic materials that would emit methane after being placed in an industrial landfill. Therefore, we investigated alternative applicability requirements for industrial waste landfills to target the reporting requirements to landfills that are expected to produce significant amounts of methane. Based on an analysis of various options (*see* the "Technical Support Document for Industrial Waste Landfills" in Docket No. EPA–HQ–OAR–2008–0508), we decided to exclude from the industrial waste landfill reporting requirements landfills that are used exclusively to dispose of inert materials or "inorganic" wastes. Specific types of wastes that are expected to be inert in the landfill (*e.g.,* bricks, glass, plastics, rocks, and fly ash) are listed. This list of inert waste types also includes wastes that contain 0.5 weight percent (dry basis) or less of volatile solids as a means for industrial waste landfill owners and operators to characterize a waste stream as "inorganic" if the waste stream is not already on the list of inert materials. We did not provide exemptions for specific industries nor limit coverage to specific industries (*e.g.,* ethanol production, food processing, or pulp and paper facilities) because the waste material generated and managed in a landfill at any given facility can be widely different, even within a given industry sector. As such, we determined that the waste material exclusions provided a better mechanism to exclude inert materials without omitting waste materials that have high organic content. Additional rationale regarding waste materials that were not specifically excluded is provided in the following paragraph.

- Geothermal filter cake. We anticipate that geothermal filter cake would be included in the exemption for rocks and soil from excavation activities. If this filter cake includes other materials, the landfills managing this waste may still be exempted if the waste can be shown to contain 0.5 weight percent (dry basis) or less of volatile solids. We note that this exclusion applies to any waste material at any industrial waste landfill (*i.e.,* any of the following bullets).
- Landfills at petroleum refineries. We did not exclude landfills at petroleum refineries because we anticipate that refinery waste materials will contain significant amounts of DOC.
- Agricultural wastes at sugar mills. Again, we did not exclude these wastes because we anticipate that the waste may contain significant amounts of DOC (scraps of sugar canes).
- Resin sand. While we excluded green sand (*i.e.,* "non-chemically" bound sand, we did not exclude resin sand because resin sand generally contains organic chemical binders that can degrade in landfills and generate methane emissions.
- Carbon and graphite wastes. These wastes are expected to contain significant amounts of carbon. It is unclear if the carbon material can be degraded. However, with the information currently available regarding this waste stream, we could not conclude that these wastes are inert. If the graphite does not contain volatile impurities, it may be possible to exempt these wastes by demonstrating that the waste material contains 0.5 weight percent (dry basis) or less of volatile solids.

We also limited the reporting requirements for industrial waste landfills to facilities whose total landfill design capacity is greater than or equal to 300,000 metric tons. Our analysis indicated that there are a large number of very small industrial waste landfills. Approximately two-thirds of the total number of potentially affected industrial waste landfills have a total landfill design capacity of less than 300,000 metric tons, and these landfills are projected to contribute only 7 percent of the total GHG emissions from industrial waste landfills. Landfills with a design capacity of less than 300,000 metric tons are expected to have emissions well below 25,000 metric tons CO_2e. Landfills of this size would not be required to report emissions if they were not co-located at an industrial facility that has other emission sources exceeding the reporting threshold. The incremental costs for requiring these small co-located industrial waste landfills to report their landfill emissions was approximately $1.25 per additional metric tons CO_2e reported (1st year costs), compared to approximately $0.05 per metric tons CO_2e reported (1st year costs) for facilities with landfills whose total landfill design capacity is greater than or equal to 300,000 metric tons.

We also agree that certain inactive landfills can be excluded from the GHG reporting requirements. As described in the preamble to the final rule for municipal solid waste (MSW) landfills (74 FR 56335), landfills that have been closed over 30 years represent a small fraction of GHG emissions from landfills and are not relevant for purposes of policy analysis. Therefore, we also limit the reporting requirements for industrial waste landfills to facilities that received waste on or after January 1, 1980.

We disagree that only industrial waste landfills that are required to monitor for methane or that are required to capture and destroy methane emissions should be included in the rule. Methane has not traditionally been a pollutant for which monitoring or destruction requirements have been established. We do not know of any such requirements, and available information indicates that few, if any, industrial waste landfills have methane capture and destruction equipment. Although few industrial landfills capture and destroy methane, that does not mean that these landfills do not generate methane in significant quantities.

As proposed, the industrial waste landfill source category did not include hazardous waste landfills or dedicated construction and demolition landfills. The final rule also excludes these landfills, however, we have clarified that hazardous waste landfills refers to those subject to RCRA Subtitle C or TSCA requirements. These landfills are excluded due to the landfill design requirements, such as "dry tomb" methods, which are expected to minimize methane production.

We have not exempted Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (Superfund) landfills. Generally, landfills become listed as CERCLA sites because the landfills were not designed for hazardous wastes but some hazardous materials were disposed of in the landfill and subsequently these materials contaminated the groundwater. Thus, these landfills were not designed and operated in a manner similar to RCRA Subtitle C or TSCA landfills. Furthermore, the remediation requirements for CERCLA landfills are determined on a site-specific basis, and these methods generally do not necessarily require significant changes to the landfill. For example, clean-up efforts focused on groundwater remediation may pump and treat the contaminated groundwater and recirculate the treated groundwater to the landfill. This technique can be used to clean-up the groundwater and leach any other remaining contaminants from the landfill, but this technique will enhance rather than limit methane generation from the landfill. Consequently, landfills that are subsequently listed by States as "hazardous" for the purposes of

CERCLA (Superfund) or similar State programs are not excluded from the industrial waste landfill source category.

In summary, the final industrial waste landfill rule does not apply to: (1) Industrial waste landfills that have not accepted waste on or after January 1, 1980; (2) industrial waste landfills that have a total design capacity of less than 300,000 metric tons; (3) RCRA Subtitle C or TSCA hazardous waste landfills; (4) dedicated construction and demolition landfills; and (5) industrial waste landfills that receive only one or more of the following types of waste materials: coal combustion residue (*e.g.,* fly ash); cement kiln dust; rocks and/or soil from excavation and construction and similar activities; glass; non-chemically bound sand (*e.g.,* green foundry sand); clay, gypsum, or pottery cull; bricks, mortar, or cement; furnace slag; materials used as refractory (*e.g.,* alumina, silicon, fire clay, fire brick); plastics; or other waste material that has a volatile solids concentration of 0.5 weight percent (on a dry basis) or less.

Method for Calculating GHG Emissions

Comment: Several commenters suggested that EPA not require direct measurement of the waste entering the landfill. One commenter noted that there are materials that are conveyed and sluiced to solid waste disposal areas that could not be monitored across truck scales. The commenters suggested a number of alternatives to direct mass measurements, which include:

- Allow the use of company records.
- Allow the use of any measurement method specified in an applicable permit or any reasonable estimation method that is adequately documented.
- Allow the use of typical waste disposal records and other testing on parameters such as density and chemical analysis.
- Allow periodic calibration of the trucks hauling landfill waste to determine the weight to volume ratio of various waste streams provides a practical measurement for industrial waste landfills.
- Allow estimation methods outlined in the proposal to calculate previous years' data be applied in future years (*i.e.,* require direct waste measurements for only one year).

Response: Unlike MSW landfills, many industrial waste landfills do not directly weigh waste loads as they enter the landfill. We reevaluated the cost of requiring direct mass measurements for industrial waste landfills. According to one of the commenters, the capital cost of installing scales could be as much as $50,000 each, with operating and driver time resulting in an estimated annualized cost of over $23,000. We also considered the uncertainty associated with different measuring methods and their resulting uncertainty in the overall modeled methane generation. Given the significant additional costs for requiring direct mass measurements at industrial waste landfills and the limited improvement in the uncertainty of the reported methane emissions, we revised the rule so that direct mass measurements are not required for industrial waste landfills.

In 40 CFR 98.463 of the final rule, industrial waste landfills that are subject to the rule are given several options for determining the current waste quantities and historical values for waste quantities and DOC. The types of processes that generate the waste, the types of waste generated, and the means by which the wastes are transported or conveyed to the landfill are very diverse. As such, different methods of determining these waste quantities are needed. Consequently waste quantities determined for years for which emissions reports are required may be determined by any of the following methods: direct mass measurements; volume measurements and waste stream density determined from measurement data or process knowledge; mass balance procedures, determining the mass of waste as the difference between the mass of the process inputs and the mass of the process outputs; and the number of loads (*e.g.,* trucks) and the mass of waste per load based on the working capacity of the container or vehicle.

We determined these methods accommodate the approaches requested by the commenters except for the last bulleted item. We do not agree with the commenter's request to allow projections of waste quantities disposed of after the first reporting year based on processing rate correlations used to project historical waste quantities. This method would not account for processing changes that may reduce (or increase) the waste generation rate. Given the flexibility in determining waste disposal quantities in a given reporting year, we determined that the costs of determining these waste quantities as provided in the final rule are reasonable and that the provided methods would produce more accurate values for the purposes of reporting than the "future" projection of waste quantities based on a single year of measurement data.

We also provide a number of methods by which historical waste quantities must be determined subject to the hierachy of available data. Historical waste quantities must be determined using the methods specified for current waste quantities when that information is available. For years when waste quantity data are not available, historical waste quantities must be estimated using production or processing rates when these data are available. For years when neither waste quantity data nor production/processing rate data are available, historical waste quantities must be estimated based on the capacity of the landfill used and the number of years the landfill has accepted waste.

Comment: Several commenters requested that more information be provided in the rule to calculate GHG emissions from industrial waste landfills, including an expansion of the type of information in Table HH–1 of the rule, especially if reporting of GHG emissions from industrial waste landfills is not limited to the food processing, pulp and paper, and ethanol production facilities. One commenter suggested that, if there are no DOC or k parameters in Table HH–1 for a given waste category, such as boiler ashes, reporters should assume they are zero and that no CH_4 is generated from that waste. According to the commenter, this assumption would more accurately calculate CH_4 emissions from a landfill by excluding quantities of inert wastes rather than assuming all wastes generate CH_4.

Response: We have specifically included a default DOC value of zero for inert materials in Table TT–1. Inert material is described as any waste material (such as glass, cement, and fly ash) that is specifically listed in § 98.460(b)(3) paragraphs (i) through (xii). As discussed previously, industrial waste landfills that receive only inert materials are not required to report, but landfills that receive both degradable organic and inert waste streams may use the default DOC for the quantity of inert material disposed of in the industrial waste landfill. For all other (non-inert) waste materials, the final rule allows either the use of Table TT–1 to determine the default values for DOC or the use of measured, waste stream-specific DOC values following the methods provided in the final rule. In addition to default DOC and k values for selected industries, we have also included in Table TT–1 of 40 CFR part 98, subpart TT default DOC and k value for "other solid industrial waste (not otherwise specified)." As such, there should no longer be an "unlisted" waste stream.

Costs

Comment: One commenter stated that EPA presents its summary cost analysis data in the preamble with further details in the accompanying regulatory impact analysis (RIA) report. The commenter stated that EPA presented cost data for each of the subparts separately but fails to consider the overall burden per facility of complying with multiple subparts, including landfills, as is the case with most industrial facilities.

Response: EPA agrees that the costs facing facilities in some sectors include not only process costs but additional costs associated with other subparts in the rule. While these costs are presented individually in the costs tables, where these conditions apply the costs are summed across applicable subparts and compared to revenues in the economic and small entity impact analyses. In response to comments on this issue, we revised the RIA of the 2009 final rule to more clearly describe the approach taken. The same approach has been taken for this rule.

III. Other Source Categories Proposed in 2009

A. Overview

With this action EPA has made the final decision not to include Ethanol Production or Food Processing as distinct subparts in 40 CFR part 98. This decision does not change the applicability requirements under other subparts of this rule that may affect these industries. Further explanation of this decision is included in Section III.B and III.C of this preamble. EPA has also made the final decision to not include Suppliers of Coal in 40 CFR part 98 at this time. Further explanation of this decision is included in Section III.D of this preamble.

B. Ethanol Production

EPA has made the final decision not to include Ethanol Production (proposed as 40 CFR part 98, subpart J) as a distinct subpart in 40 CFR part 98. EPA has determined that it is not necessary to include 40 CFR part 98, subpart J in order to cover ethanol facilities in the final rule. Thus, although there is no distinct subpart applicable to ethanol production, these facilities will still be subject to the final rule (if emissions exceed the applicable threshold) and the overall coverage of the final rule regarding these facilities is the same as that of the proposed rule.

The proposal for this subpart (74 FR 16448, April 10, 2009) did not include any unique requirements for monitoring or reporting of process emissions from ethanol production facilities. Instead, the proposed subpart simply referred to reporting that those facilities might be required to do under other subparts, namely, 40 CFR part 98, subpart C—Stationary Combustion, subpart HH-Landfills, and subpart II—Wastewater Treatment.

EPA received many comments on this subpart covering various topics. EPA's response to these comments can be found in the comment response document for ethanol production in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Subpart J: Ethanol Production."

40 CFR part 98, subpart J was originally included as a distinct subpart to clearly indicate that these facilities must aggregate emissions from all source categories when determining whether emissions exceeded the applicable threshold. As structured, the proposed subpart specifically required that emissions from stationary combustion, on-site landfills, and on-site wastewater treatment were to be aggregated in determining the reporting threshold and reporting emissions from these facilities.

Upon closer examination of 40 CFR 98.2(a), it is clear that ethanol production facilities are already required to report if they meet the threshold of 25,000 tons CO_2e by aggregating emissions from all applicable source categories in the rule including stationary combustion, industrial wastewater treatment, industrial waste landfills, miscellaneous use of carbonates, and any others that may apply. In fact, any type of facility not specifically identified in a subpart must report their GHG emissions if that facility contains source categories itemized by the rule and their aggregate emissions meet the applicable threshold.

Note that in this final rule, ethanol production facilities are among those specifically identified in 40 CFR part 98, subpart II—Industrial Wastewater Treatment and are required to report if they meet the applicability provisions in 40 CFR 98.2(a)(2). Thus for clarity, the definition of ethanol production facility is included in 40 CFR 98.358.

Again, in sum, EPA has determined that it is not necessary to include 40 CFR part 98, subpart J in order to cover ethanol facilities in the final rule. Moreover, highlighting the ethanol production (and food processing) categories as being covered by the rule due to emissions covered by other source categories may give the false impression that there are not any other types of sources that may be covered by the rule due to their aggregate emissions from stationary combustion, industrial waste landfills and/or industrial wastewater treatment.

C. Food Processing

EPA has made the final decision not to include Food Processing (proposed as 40 CFR part 98, subpart M) as a distinct subpart in 40 CFR part 98. EPA had determined that it is not necessary to include 40 CFR part 98, subpart M in order to cover food processing facilities in 40 CFR part 98. Thus, although there is no distinct subpart applicable to food processing, these facilities will still be subject to the final rule (if emissions exceed the applicable threshold) and the overall coverage of the final rule regarding these facilities is the same as that of the proposed rule.

The proposal for this subpart (74 FR 16448, April 10, 2009) did not include any unique requirements for monitoring or reporting of process emissions from food processing facilities. Instead, the proposed subpart simply referred to reporting that those facilities might be required to do under other subparts, namely, 40 CFR part 98, subpart C—Stationary Combustion, subpart HH—Landfills, and subpart II—Wastewater Treatment.

EPA received many comments on this subpart covering various topics. EPA's response to these comments can be found in the comment response document for food processing in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Subpart M: Food Processing."

40 CFR part 98, subpart M was originally included as a distinct subpart to clearly indicate that these facilities must aggregate emissions from all source categories when determining whether emissions exceeded the applicable threshold. As structured, the proposed subpart specifically required that emissions from stationary combustion, on-site landfills, and on-site wastewater treatment were to be aggregated in determining the reporting threshold and reporting emissions from these facilities.

Upon closer examination of 40 CFR 98.2(a), it is clear that food processing facilities are already required to report if they meet the threshold of 25,000 tons CO_2e by aggregating emissions from all applicable source categories in the rule including stationary combustion, industrial wastewater treatment, industrial waste landfills, miscellaneous use of carbonates, and any others that may apply. In fact, any type of facilities not specifically identified in a subpart must report their GHG emissions if that facility contains source categories

itemized by the rule and their aggregate emissions meet the applicable threshold.

Note that in this final rule, food processing facilities are among those specifically identified in 40 CFR part 98, subpart II—Industrial Wastewater Treatment and are required to report if they meet the applicability provisions in 40 CFR 98.2(a)(2). Thus, for clarity, a definition of food processing facility is included in 40 CFR 98.358.

Again, in sum, EPA has determined that it is not necessary to include 40 CFR part 98, subpart M in order to cover food processing facilities in the final rule. Moreover, highlighting the food processing (and ethanol production) categories as being covered by the rule due to emissions covered by other source categories may give the false impression that there are not any other types of sources that may be covered by the rule due to their aggregate emissions from stationary combustion, industrial waste landfills and/or industrial wastewater treatment.

D. Suppliers of Coal

As proposed (74 FR 16448, April 10, 2009) 40 CFR part 98, subpart KK would have required that all coal mines, coal importers and exporters, and coal waste reclaimers report the amount of coal produced or supplied to the economy annually, as well as the CO_2 emissions that would result from complete oxidation or combustion of this quantity of coal. After reviewing the comments received on the proposal as well as other available information, EPA has made a final decision not to include Suppliers of Coal (proposed as 40 CFR part 98, subpart KK) in 40 CFR part 98 at this time.

EPA's rationale for not requiring reporting from coal suppliers at this time is that (i) the overlap in reporting from upstream coal suppliers and downstream emitters is almost 100 percent indicating that double-reporting does not provide more complete information to EPA, unlike with other upstream supplier subparts (*e.g.,* 40 CFR part 98, subpart MM and NN), and (ii) the high accuracy of the downstream reporting provisions in 40 CFR part 98 provide more than adequate emissions data for anticipated near-term uses.

The overall purpose of 40 CFR part 98 is to collect information to inform the development of future climate policy and programs under the CAA. In the context of GHG emissions from coal consumption, EPA seeks information on the magnitude and location of facility-level emissions across the economy as well as overall emissions at the national level. These near-term needs can be met with high accuracy and at principally the same coverage through existing reporting requirements for direct emitters under 40 CFR part 98, primarily through reporting under 40 CFR part 98, subparts C, D, and Q. For example, the existing 40 CFR part 98, subpart D, which accounts for approximately 94 percent of emissions from the use of coal, builds on rigorous monitoring requirements of 40 CFR part 75. Coal-fired electricity generating units subject to 40 CFR part 75 typically use continuous emissions monitoring equipment that measures actual carbon dioxide emissions hourly. Furthermore, 40 CFR part 98 requires rigorous Tier 3 and Tier 4 reporting at industrial facilities with large units combusting coal and other solid fuels. Reporting requirements under 40 CFR part 98, subpart C (general stationary combustion) and 40 CFR part 98, subpart D (electricity generation) will allow EPA to obtain data on more than 99 percent of total CO_2 emissions from coal combustion through existing reporting provisions of 40 CFR part 98. The proposed 40 CFR part 98, subpart KK procedures would have covered approximately 100 percent of coal supplied to the economy and resulting downstream CO_2 combustion emissions. The difference in combustion coverage of less than 1 percent is estimated to come from the smallest consumers of coal, such as home owners for use in heating.

Furthermore, EPA's near-term needs regarding the data can be met with higher accuracy through existing reporting requirements for direct emitters. Under the proposed 40 CFR part 98, subpart KK, approximately 50 percent of coal suppliers would have used engineering calculations to correlate HHV from daily coal samples with carbon content from either daily or monthly coal samples, assuming those are representative of the entire coal stream. For the remaining coal mines, the proposed 40 CFR part 98, subpart KK procedures would have relied on default CO_2 emissions values, which are less accurate than direct measurement and would not have supplied mine specific data. Furthermore, existing reporting procedures for direct emitters account for the combustion efficiency of the facility rather than assume 100 percent combustion or oxidation as was proposed in 40 CFR part 98, subpart KK.

While EPA believes that the proposal had a pragmatic approach to balancing accuracy and cost, it is clear that the upstream data under proposed 40 CFR part 98, subpart KK would not have been as accurate as the more rigorously monitored data reported by direct emitters. In sum, including proposed 40 CFR part 98, subpart KK would have provided EPA with a near negligible amount of additional information on emissions, while not achieving the same level of accuracy as the existing reporting downstream.

Though cost and burden are not reasons for EPA's decision to exclude 40 CFR part 98, subpart KK, EPA notes that changing the 40 CFR part 98, subpart KK proposal to require more rigorous reporting on par with downstream requirements would have raised the costs and burden of proposed 40 CFR part 98, subpart KK significantly. In the proposed Regulatory Impacts Analysis Cost Appendix Section 29, EPA assumed that 52 percent of coal mines (706) mines would meet 40 CFR part 98, subpart KK requirements by sampling and testing for coal content monthly and that 48 percent (659 mines) would meet requirements by using default factors. To raise the reporting rigor, EPA would have had to require 100 percent of coal mines (1,365 mines) to sample and test coal content daily.

In addition, there is other information available to EPA such as the *Inventory of U.S. Greenhouse Gas Emissions and Sinks*,[4] other data reported by coal-fired electricity generating units to EPA's Acid Rain Program, and the Energy Information Administration's (EIA) detailed coal production, consumption, imports and exports data.[5] The national GHG inventory tracks CO_2 emissions from the combustion of coal across the entire economy for each year since 1990 and breaks down emissions according to economic sector. From this data set EPA determined that in 2007, electricity generation accounted for approximately 94 percent of all CO_2 emissions from coal combustion. The remaining emissions from coal consumption come primarily from the industrial sector. EIA collects and publishes annual data on coal production, consumption, imports and exports, thus providing an additional source of information to serve as a check on estimates of emissions from this sector and to inform potential policies and programs related to coal supply. As EPA has stated in this preamble and in the original 40 CFR part 98, subpart KK proposal, rigorous, direct CO_2 emissions measurements of coal combustion are preferred by EPA over the use of default CO_2 values for informing policies and programs that relate to stationary source emissions. However, policies and programs of another nature for which default

[4] *http://www.epa.gov/climatechange/emissions/usinventoryreport.html.*

[5] *http://www.eia.doe.gov/fuelcoal.html.*

emissions values are more appropriate and have been previously used by EPA, such as life cycle emissions considerations for National Environmental Policy Act (NEPA) analyses and Federal government climate change contribution analyses, can be adequately informed at this time by existing EIA data on coal production and default CO_2 emissions values.

EPA views potential double-reporting for emissions from other fossil fuels as appropriate where downstream reporting of all or the large majority of emissions is impractical and where the upstream and downstream reporting combine to provide the complete picture. Near complete downstream coverage, as is achieved with coal, is not possible for downstream users of petroleum, natural gas, or industrial gases. In many cases, the fossil fuels and industrial GHGs supplied by producers and importers are used and ultimately emitted by a large number of small sources, particularly in the commercial and residential sectors (*e.g.,* HFCs emitted from home air conditioning units or CO_2 emissions from individual motor vehicles). EPA would have had to require reporting by hundreds or thousands of small facilities to cover all direct emissions. EPA determined it was more appropriate to require reporting by the suppliers of petroleum products, natural gas and natural gas liquids, and industrial gases and CO_2. As exhibited by Table 5–18 of the RIA of the October 2009 Final Rule, the downstream emitters requirements of the October 2009 Final Rule account for only 20 percent of petroleum supply, approximately 23 percent of natural gas supply and 28 percent of industrial gas supply. Comparatively, requiring reporting by suppliers of these fuels, accounts for a much larger percentage of emissions (100 percent for petroleum and industrial gas suppliers and approximately 68 percent for natural gas suppliers).

Some commenters suggested that 40 CFR part 98, subpart KK data on the carbon content of all coal supplied would have informed the downstream effects of emissions changes resulting from the changing carbon intensity of the fuel (which in turn assists in analyses such as Best Available Control Technology (BACT)). EPA notes that it did not propose that facilities affected by 40 CFR part 98, subpart KK would report information on their customers because coal from multiple suppliers can be blended together and sent to multiple customers. Therefore information on downstream effect would not have been available for use from the proposed 40 CFR part 98, subpart KK. For other upstream categories, EPA also did not propose and does not require detailed information about specific customers. If EPA determines that such type of carbon content data are necessary for a specific analysis or determination, the Agency can request it at that time. The robust data being collected now on downstream CO_2 emissions are adequate for general policy analysis and will assist the Agency in targeting additional information requests in the future.

EPA's final decision is entirely consistent with the language of the various appropriations acts authorizing the expenditure of money for the reporting rule. The language in the FY2008 Appropriations Act instructed EPA to spend the money on a rule requiring reporting "in all sectors of the economy." The Joint Explanatory Statement provided that EPA should include upstream production "to the extent that the Administrator deems appropriate." The appropriations language grants EPA much discretion to determine the appropriate source categories to include in the reporting rule.

The phrase "all sectors of the economy" is not further elaborated in the FY2008 or later appropriations language. The term is ambiguous, and EPA may interpret it in any reasonable manner. *See Chevron, U.S.A.* v. *NRDC,* 467 U.S. 837 (1984). Notably, the phrase is not "all *industrial* sectors" but rather "all sectors *of the economy*." There is a difference between an industrial sector and a sector of the economy. The former typically refers to a specific type of industry, while the latter refers to categories of industries or businesses. For example, the North American Industrial Classification System (NAICS) is a two- through six-digit hierarchical classification system, offering five levels of detail, ranging from the broad economic sector to the narrower national industry. *See http://www.census.gov/eos/www/naics/faqs/faqs.html#q5* (last visited May 10, 2010) ("Each digit in the code is part of a series of progressively narrower categories, and the more digits in the code signify greater classification detail. The first two digits designate the economic sector, the third digit designates the subsector, the fourth digit designates the industry group, the fifth digit designates the NAICS industry, and the sixth digit designates the national industry.").[6]

In the proposed rule, EPA used the term "sector" to refer both to different types of sectors of the economy and specific industrial sectors or source categories. *Compare* 74 FR 16467/1 (referring to source categories in the "agricultural and land use sectors") to 74 FR 16488/1 (referring to "adipic acid production sector"). Unfortunately, that usage may have caused some confusion, and lead some stakeholders to believe that the two types of sectors are interchangeable and equivalent. But as noted above, there are differences between sectors of the economy, industrial sectors and source categories in the reporting rule. EPA can cover a sector of the economy in the reporting rule without covering every type of source in that sector of the economy.

40 CFR part 98 already covers a broad and diverse selection of sources and emissions in the various sectors of the economy (*e.g.,* fuel and industrial gas suppliers, motor vehicle manufacturers, underground coal mines, manufacturing facilities, universities and other facilities with stationary combustion). While EPA considers it reasonable to include more than one source category in any given sector of the economy, it is not required to include every possible source category.

In any event, the appropriations language at most denotes a Congressional intent to ensure that emissions from various economic sectors are covered by the rule. As noted above, 40 CFR part 98 already adequately covers emissions from coal combustion even without getting additional information from coal suppliers.

Finally, the Joint Explanatory Statement already contemplated that the Administrator may not "deem[] it appropriate" to include *all* possible upstream production and downstream sources. As explained above, the October 2009 Final Rule already thoroughly covers the emissions that result from coal combustion. That information, combined with other sources of information regarding the coal supply available to EPA, makes EPA's decision that it is not "appropriate" at this time to include coal suppliers in the rule entirely reasonable.

EPA will continue to assess the need for reporting from coal suppliers in the future in light of new information or identification of policy or program needs. If EPA were to decide in the future to add coal suppliers to 40 CFR

[6] Although we cite to the NAICS system as an example illustrating that sectors of the economy are considered to be broader than industrial groupings, we are not indicating that we think the appropriations language requires EPA to cover sources from the 20 sectors covered by the NAICS.

part 98 it would initiate a new rulemaking process.

IV. Economic Impacts on the Rule

This section of the preamble examines the costs and economic impacts of the proposed rulemaking and the estimated economic impacts of the rule on affected entities, including estimated impacts on small entities. Complete detail of the economic impacts of the final rule can be found in the text of the EIA in the docket for this rulemaking (EPA–HQ–OAR–2008–0508).

A large number of comments on economic impacts of the rule were received covering numerous topics. Responses to significant comments received can be found in "Mandatory Greenhouse Gas Reporting Rule: EPA's Response to Public Comments, Cost and Economic Impacts of the Rule." Additional subpart specific comments and responses can be found in EPA's Response to Public Comments subpart specific documents.

A. How were compliance costs estimated?

1. Summary of Method Used To Estimate Compliance Costs

EPA used available industry and EPA data to characterize conditions at affected sources. Incremental monitoring, recordkeeping, and reporting activities were then identified for each type of facility and the associated costs were estimated. The annual costs reported in 2006$. EPA's estimated costs of compliance are discussed below and in greater detail in Section 4 of the EIA (EPA–HQ–OAR–2008–0508):

Labor Costs. The vast majority of the reporting costs include the time of managers, technical, and administrative staff in both the private sector and the public sector. Staff hours are estimated for activities, including:

- *Monitoring (private):* staff hours to operate and maintain emissions monitoring systems.
- *Recordkeeping and Reporting (private):* staff hours to gather and process available data and reporting it to EPA through electronic systems.
- *Assuring and releasing data (public):* staff hours to quality assure, analyze, and release reports.

Staff activities and associated labor costs will potentially vary over time. Thus, cost estimates are developed for start-up and first-time reporting, and subsequent reporting. Wage rates to monetize staff time are obtained from the Bureau of Labor Statistics (BLS).

Equipment Costs. Equipment costs include both the initial purchase price and any facility modification that may be required. Based on expert judgment, the engineering costs analyses annualized capital equipment costs with appropriate lifetime and interest rate assumptions. One-time capital costs are amortized over a 10-year cost recovery period at a rate of 7 percent.

B. What are the costs of the rule?

1. Summary of Costs

The total annualized costs incurred under the reporting rule would be approximately $7.0 million in the first year and $5.5 million in subsequent years ($2006). This includes a public sector burden estimate of $0.3 million for program implementation and verification activities. Table 3 of this preamble shows the first year and subsequent year costs by subpart. In addition, it presents the relative share of the total cost represented by each subpart.

TABLE 3—NATIONAL ANNUALIZED MANDATORY REPORTING COSTS ESTIMATES (2008$): SUBPARTS T, KK, II, AND TT

Subpart	2007 NAICS	First year		Subsequent years	
		Millions 2006$	Share	Millions 2006$	Share
Subpart T—Magnesium Production.	331419 and 331492	$0.1	2%	$0.1	2%
Subpart FF—Underground Coal Mines.	212112	4.0	57%	2.8	51%
Subpart II—Industrial Wastewater Treatment.	322110, 322121, 322122, 322130, 311611, 311411, 311421, 325193, and 324110.	1.5	21	1.5	26
Subpart TT—Industrial Waste Landfills.	322110, 322121, 322122, 322130, 311611, 311411, and 311421.	1.1	16%	0.8	15%
Private Sector, Total		6.7	96%	5.2	95%
Public Sector, Total		0.3	4%	0.3	5%
Total		7.0	100%	5.5	100%

C. What are the economic impacts of the rule?

1. Summary of Economic Impacts

EPA prepared an economic analysis to evaluate the impacts of this rule on affected industries. To estimate the economic impacts, EPA first conducted a screening assessment, comparing the estimated total annualized compliance costs by industry, where industry is defined in terms of North American Industry Classification System (NAICS) code, with industry average revenues. Average cost-to-sales ratios for establishments in affected NAICS codes are typically less than 1 percent.

These low average cost-to-sales ratios indicate that the rule is unlikely to result in significant changes in firms' production decisions or other behavioral changes, and thus unlikely to result in significant changes in prices or quantities in affected markets. Thus, EPA followed its Guidelines for Preparing Economic Analyses (EPA, 2002, p. 124–125) and used the engineering cost estimates to measure the social cost of the rule, rather than modeling market responses and using the resulting measures of social cost. Table 4 of this preamble summarizes cost-to-sales ratios for affected industries.

TABLE 4—ESTIMATED COST-TO-SALES RATIOS FOR AFFECTED ENTITIES

[First year, 2006$]

2007 NAICS	NAICS description	Subpart	Average cost per entity ($/entity)	All enterprises (%)
331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum).	T	$10,520	0.1
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).	T	10,520	0.1
212112	Bituminous Coal Underground Mining	FF	34,717	0.2
322110	Pulp Mills	TT	5,583	< 0.1
322121	Paper (except Newsprint) Mills	TT	5,583	< 0.1
322122	Newsprint Mills	TT	5,583	< 0.1
322130	Paperboard Mills	TT	5,583	< 0.1
311611	Animal (except Poultry) Slaughtering	TT	5,583	< 0.1
311411	Frozen Fruit, Juice, and Vegetable Manufacturing	TT	5,583	< 0.1
311421	Fruit and Vegetable Canning	TT	5,583	< 0.1
322110	Pulp Mills	II	4,235	< 0.1
322121	Paper (except Newsprint) Mills	II	4,235	< 0.1
322122	Newsprint Mills	II	4,235	< 0.1
322130	Paperboard Mills	II	4,235	< 0.1
311611	Animal (except Poultry) Slaughtering	II	3,963	< 0.1
311411	Frozen Fruit, Juice, and Vegetable Manufacturing	II	3,963	< 0.1
311421	Fruit and Vegetable Canning	II	3,963	< 0.1
325193	Ethyl Alcohol Manufacturing	II	5,140	< 0.1
324110	Petroleum Refineries	II	3,963	< 0.1

D. What are the impacts of the rule on small businesses?

1. Summary of Impacts on Small Businesses

As required by the RFA and SBREFA, EPA assessed the potential impacts of the rule on small entities (small businesses, governments, and non-profit organizations). (*See* Section V.C of this preamble for definitions of small entities).

EPA conducted a screening assessment comparing compliance costs for affected industry sectors to industry-specific receipts data for establishments owned by small businesses. This ratio constitutes a "sales" test that computes the annualized compliance costs of this rule as a percentage of sales and determines whether the ratio exceeds some level (*e.g.,* 1 percent or 3 percent).

The cost-to-sales ratios were constructed at the establishment level (average reporting program costs per establishment/average establishment receipts) for several business size ranges. This allowed EPA to account for receipt differences between establishments owned by large and small businesses and differences in small business definitions across affected industries. The results of the screening assessment are shown in Table 5 of this preamble.

As shown, the cost-to-sales ratios are typically less than 1 percent for establishments owned by small businesses that EPA considers most likely to be covered by the reporting program (*e.g.,* establishments owned by businesses with 100 or more employees).

TABLE 5—ESTIMATED COST-TO-SALES RATIOS BY INDUSTRY AND ENTERPRISE SIZE (FIRST YEAR, 2006$) [a]

2007 NAICS	NAICS description	Subpart	SBA size standard (effective August 22, 2008)	Average cost per entity ($/entity)	All enterprises	Owned by enterprises with:					
						1 to 20 employees [b]	20 to 99 employees	100 to 499 employees	500 to 749 employees	750 to 999 employees	1,000 to 1,499 employees
331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum).	T	750 employees.	$10,520	0.1%	0.9%	0.2%	0.1%	D	D	D
331492	Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum).	T	750 employees.	$10,520	0.1%	0.7%	0.1%	0.2%	D	D	D
212112	Bituminous Coal Underground Mining.	FF	500 employees.	$34,717	0.2%	3.0%	3.4%	0.2%	D	D	D
322110	Pulp Mills	TT	750 employees.	$5,583	<0.1%	0.4%	D	D	D	D	D
322121	Paper (except Newsprint) Mills.	TT	750 employees.	$5,583	<0.1%	D	0.1%	D	D	D	D

TABLE 5—ESTIMATED COST-TO-SALES RATIOS BY INDUSTRY AND ENTERPRISE SIZE (FIRST YEAR, 2006$) [a]—Continued

2007 NAICS	NAICS description	Subpart	SBA size standard (effective August 22, 2008)	Average cost per entity ($/entity)	All enterprises	Owned by enterprises with:					
						1 to 20 employees [b]	20 to 99 employees	100 to 499 employees	500 to 749 employees	750 to 999 employees	1,000 to 1,499 employees
322122	Newsprint Mills	TT	750 employees.	$5,583	<0.1%	D	D	D	NA	D	D
322130	Paperboard Mills.	TT	750 employees.	$5,583	<0.1%	1.1%	0.1%	<0.1%	NA	D	D
311611	Animal (except Poultry) Slaughtering.	TT	500 employees.	$5,583	<0.1%	0.5%	0.1%	<0.1%	D	D	<0.1%
311411	Frozen Fruit, Juice, and Vegetable Manufacturing.	TT	500 employees.	$5,583	<0.1%	0.3%	0.1%	<0.1%	<0.1%	D	<0.1%
311421	Fruit and Vegetable Canning.	TT	500 employees.	$5,583	<0.1%	0.4%	0.1%	<0.1%	<0.1%	<0.1%	<0.1%
322110	Pulp Mills	II	750 employees.	$4,235	<0.1%	0.3%	D	D	D	D	D
322121	Paper (except Newsprint) Mills.	II	750 employees.	$4,235	<0.1%	D	<0.1%	D	D	D	D
322122	Newsprint Mills	II	750 employees.	$4,235	<0.1%	D	D	D	NA	D	D
322130	Paperboard Mills.	II	750 employees.	$4,235	<0.1%	0.8%	<0.1%	<0.1%	NA	D	D
311611	Animal (except Poultry) Slaughtering.	II	500 employees.	$3,963	<0.1%	0.4%	<0.1%	<0.1%	D	D	<0.1%
311411	Frozen Fruit, Juice, and Vegetable Manufacturing.	II	500 employees.	$3,963	<0.1%	0.2%	<0.1%	<0.1%	<0.1%	D	<0.1%
311421	Fruit and Vegetable Canning.	II	500 employees.	$3,963	<0.1%	0.3%	<0.1%	<0.1%	<0.1%	<0.1%	<0.1%
325193	Ethyl Alcohol Manufacturing.	II	1,000 employees.	$5,140	<0.1%	D	D	D	D	NA	D
324110	Petroleum Refineries.	II	1,500 employees [c].	$3,963	<0.1%	0.1%	<0.1%	<0.1%	<0.1%	D	D
331419	Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum).	T	750 employees.	$10,520	0.1%	0.9%	0.2%	0.1%	D	D	D

Note: D denotes that receipt data was not disclosed. NA denotes that the enterprise category is not applicable (*i.e.,* no enterprises were reported within this category). Receipt data in Table 5–7 has been adjusted to 2006$ using the latest GDP implicit price deflator reported by the U.S. Bureau of Economic Analysis (103.257/92.118 = 1.121) *http://www.bea.gov/national/nipaweb/Index.asp* (accessed December 21, 2009).

[a] The Census Bureau defines an enterprise as a business organization consisting of one or more domestic establishments that were specified under common ownership or control. The enterprise and the establishment are the same for single-establishment firms. Each multi-establishment company forms one enterprise—the enterprise employment and annual payroll are summed from the associated establishments. Enterprise size designations are determined by the summed employment of all associated establishments.

Since the SBA's business size definitions (*http://www.sba.gov/size*) apply to an establishment's ultimate parent company, we assume in this analysis that the enterprise definition above is consistent with the concept of ultimate parent company that is typically used for Small Business Regulatory Enforcement Fairness Act (SBREFA) screening analyses.

[b] Excludes *Statistics of U.S. Businesses* (SUSB) employment category for zero employees. These entities only operated for a fraction of the year.

[c] NAICS code 324110—in addition, the petroleum refiner must not have more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

E. What are the benefits of the rule for society?

EPA examined the potential benefits of 40 CFR part 98. EPA's previous analysis of 40 CFR part 98 discussed the benefits of a reporting system with respect to policy making relevance, transparency issues, and market efficiency. Instead of a quantitative analysis of the benefits, EPA conducted a systematic literature review of existing studies including government, consulting, and scholarly reports.

A mandatory reporting system will benefit the public by increased transparency of facility emissions data. Transparent, public data on emissions allows for accountability of polluters to the public stakeholders who bear the cost of the pollution. Citizens, community groups, and labor unions have made use of data from Pollutant Release and Transfer Registers to negotiate directly with polluters to lower emissions, circumventing greater government regulation. Publicly available emissions data also will allow individuals to alter their consumption habits based on the GHG emissions of producers.

The greatest benefit of mandatory reporting of industry GHG emissions to government will be realized in developing future GHG policies. For example, in the EU's Emissions Trading System, a lack of accurate monitoring at the facility level before establishing CO_2 allowance permits resulted in allocation of permits for emissions levels an average of 15 percent above actual levels in every country except the United Kingdom.

Benefits to industry of GHG emissions monitoring include the value of having independent, verifiable data to present

to the public to demonstrate appropriate environmental stewardship, and a better understanding of their emission levels and sources to identify opportunities to reduce emissions. Such monitoring allows for inclusion of standardized GHG data into environmental management systems, providing the necessary information to achieve and disseminate their environmental achievements.

Standardization will also be a benefit to industry, once facilities invest in the institutional knowledge and systems to report emissions, the cost of monitoring should fall and the accuracy of the accounting should improve. A standardized reporting program will also allow for facilities to benchmark themselves against similar facilities to understand better their relative standing within their industry.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) this action is a "significant action" because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action. In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in the EIA, "Economic Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions: Subparts: T, FF, II, and TT". A copy of the analysis is available in the docket for this action (Docket Item EPA–HQ–OAR–2008–0508–2313) and the analysis is briefly summarized here. EPA's cost analysis, presented in Section 4 of the EIA, estimates the total annualized cost of the rule will be approximately $7.0 million (in 2006$) during the first year of the program and $5.5 million in subsequent years (including $0.3 million of programmatic costs to the Agency).

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them.

EPA plans to collect complete and accurate economy-wide data on facility-level GHG emissions. Accurate and timely information on GHG emissions is essential for informing future climate change policy decisions. Through data collected under this rule, EPA will gain a better understanding of the relative emissions of specific industries, and the distribution of emissions from individual facilities within those industries. The facility-specific data will also improve our understanding of the factors that influence GHG emission rates and actions that facilities are already taking to reduce emissions. Additionally, EPA will be able to track the trend of emissions from industries and facilities within industries over time, particularly in response to policies and potential regulations. The data collected by this rule will improve EPA's ability to formulate climate change policy options and to assess which industries would be affected, and how these industries would be affected by the options.

This information collection is mandatory and will be carried out under CAA section 114. Information identified and marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. However, emissions data collected under CAA section 114 cannot generally be claimed as CBI and will be made public.

For these final subparts, the projected cost and hour burden for non-Federal respondents is $5.13 million and 66.0 million hours per year. The estimated average burden per response is 29.1 hours; the frequency of response is annual for all respondents that must comply with the rule's reporting requirements and the estimated average number of likely respondents per year is 683. The cost burden to respondents resulting from the collection of information includes the total capital cost annualized over the equipment's expected useful life (averaging $0.5 million), a total operation and maintenance component (averaging $1.6 million per year), and a labor cost component (averaging $3.6 million per year).

Burden is defined at 5 CFR 1320.3(b). These cost numbers differ from those shown elsewhere in the EIA for these subparts because the information collection request (ICR) costs represent the average cost over the first three years of the rule, but costs are reported elsewhere in the EIA for the subparts for the first year of the rule and for subsequent years of the rule. In addition, the ICR focuses on respondent burden, while the RIA for the final rule includes EPA Agency costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act (RFA)

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 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, a small entity is defined as a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; according to these size standards, criteria for determining if ultimate parent companies owning affected facilities are categorized as small vary by NAICS. Small entity criteria range from total number of employees at the firm fewer than 500 to number of employees fewer than 1,500; one affected NAICS, 324110, the petroleum refiner must have no more than 1,500 employees nor more than 125,000 barrels per calendar day total Operable Atmospheric Crude Oil Distillation capacity. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks. EIA tables 5–10 and 5–11 present small business criteria and enterprise size distribution data for affected NAICS.

EPA assessed the potential impacts of the final rule on small entities using a sales test, defined as the ratio of total annualized compliance costs to firm sales. Details are provided in Section 5.3 of the EIA. These sales tests examine the average establishment's total annualized mandatory reporting costs to the average establishment receipts for enterprises

within several employment categories. The average entity costs used to compute the sales test are the same across all of these enterprise size categories. As a result, the sales-test will overstate the cost-to-receipt ratio for establishments owned by small businesses, because the reporting costs are likely lower than average entity estimates provided by the engineering cost analysis.

The results of the screening analysis show that for most NAICS, the costs are estimated to be less than 1 percent of sales in all firm size categories. For one NAICS (322130 Paperboard Mills), the costs exceed 1 percent of sales for the 1–20 employee size category; for another NAICS (212112 Bituminous Coal Underground Mining), the costs exceed 1 percent of sales for the 1–20 and 20–100 employee size category. Previous "Regulatory Impact Analysis for the Mandatory Reporting of Greenhouse Gas Emissions" (EPA–HQ–OAR–2008–0508) illustrated that pulp and paper industry enterprises with less than 20 employees were unlikely to be covered by the rule. For mining facilities, EPA's initial review of facility data suggests that mines owned by enterprises with less than 100 employees would also be unlikely to be covered by the rule.

After considering the economic impacts of today's final rule on small entities, I therefore certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Although this rule would not have a significant economic impact on a substantial number of small entities, the Agency nonetheless tried to reduce the impact of this rule on small entities, including seeking input from a wide range of private- and public-sector stakeholders. When developing the rule, the Agency took special steps to ensure that the burdens imposed on small entities were minimal. The Agency conducted several meetings with industry trade associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. The Agency investigated alternative thresholds and analyzed the marginal costs associated with requiring smaller entities with lower emissions to report. The Agency also selected a hybrid method for reporting, which provides flexibility to entities and helps minimize reporting costs.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

This final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Overall, EPA estimates that the total annualized costs of this final rule are approximately $6.7 million in the first year, and $5.3 million per year in subsequent years. Thus, this final rule is not subject to the requirements of UMRA sections 202 or 205.

This final rule is also not subject to the requirements of UMRA section 203 because it contains no regulatory requirements that might significantly or uniquely affect small governments. None of the facilities currently known to undertake these activities are owned by small governments.

E. Executive Order 13132: Federalism

These final subparts do not have federalism implications. They 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 EO 13132.

Entities affected by these final subparts are facilities that directly emit GHGs. These final subparts do not apply to governmental entities unless the government entity owns a facility that directly emits GHGs above threshold levels such as a landfill or large stationary combustion source, so relatively few government facilities would be affected. This regulation also does not limit the power of States or localities to collect GHG data and/or regulate GHG emissions. Thus, EO 13132 does not apply to this rule.

In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comments on these subparts from State and local officials. For a discussion of outreach activities to State, local, or Tribal organizations, *see* Section IX of the preamble to the proposed rule (74 FR 16602).

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

This action does not have Tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000). This regulation applies directly to facilities that directly emit GHGs. Facilities expected to be affected by these final subparts are not expected to be owned by Tribal governments. Thus, EO 13175 does not apply to this action.

Although EO 13175 does not apply to these final subparts, EPA sought opportunities to provide information to Tribal governments and representatives during development of the proposed rule, which included these subparts being finalized today. *See* Section IX of the preamble to the proposed rule (74 FR 16602).

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not a "significant energy action" as defined in EO 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. Further, we have concluded that this rule is not likely to have any adverse energy effects. This rule relates to monitoring, reporting and recordkeeping at facilities that directly emit GHGs and does not impact energy supply, distribution or use. Therefore, we conclude that this rule is not likely to have any adverse effects on energy supply, distribution, or use.

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 rulemaking involves technical standards. For these final subparts, EPA has decided to use more than a dozen voluntary consensus standards from four different voluntary consensus standards bodies, including American Society for Testing and Materials (ASTM) and American Society for Mechanical Engineers (ASME).

These voluntary consensus standards will help facilities monitor, report, and keep records of GHG emissions. No new test methods were developed for this rule. Instead, from existing rules for source categories and voluntary GHG programs, EPA identified existing means of monitoring, reporting, and keeping records of GHG emissions. The existing methods (voluntary consensus standards) include a broad range of measurement techniques, including methods to measure gas or liquid flow and methods to analyze gases by gas chromatography. All except three of these methods have already been incorporated by reference in the October 2009 Final Rule. Thus, we are adding entries to 40 CFR 98.7 for new voluntary consensus standards and modifying the entries for other voluntary consensus standards to reflect their usage in these final subparts. Thus, the test methods are incorporated by reference into the final rule and are available as specified in 40 CFR 98.7.

By incorporating voluntary consensus standards into the subparts, EPA is both meeting the requirements of the NTTAA and presenting multiple options and flexibility for measuring GHG emissions.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that these final subparts 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. These final subparts do not affect the level of protection provided to human health or the environment because they address information collection and reporting procedures.

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 (SBREFA), 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 U.S. prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 10, 2010.

List of Subjects in 40 CFR Part 98

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

Dated: June 28, 2010.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 98—[AMENDED]

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart A—[Amended]

■ 2. Section 98.1 is amended by revising paragraph (b) to read as follows:

§ 98.1 Purpose and Scope.

* * * * *

(b) Owners and operators of facilities and suppliers that are subject to this part must follow the requirements of this subpart and all applicable subparts of this part. If a conflict exists between a provision in subpart A and any other applicable subpart, the requirements of the applicable subpart shall take precedence.

■ 3. Section 98.2 is amended by revising paragraphs (a)(1), (a)(2), and (a)(4); and revising the third sentence of paragraph (i)(3) to read as follows:

§ 98.2 Who must report?

(a) * * *

(1) *A facility that contains any source category that is listed in Table A–3 of this subpart in any calendar year starting in 2010.* For these facilities, the annual GHG report must cover stationary fuel combustion sources (subpart C of this part), miscellaneous use of carbonates (subpart U of this part), and all applicable source categories listed in Table A–3 and Table A–4 of this subpart.

(2) *A facility that contains any source category that is listed in Table A–4 of this subpart that emits 25,000 metric tons CO_2e or more per year in combined emissions from stationary fuel combustion units, miscellaneous uses of carbonate, and all applicable source categories that are listed in Table A–3 and Table A–4 of this subpart.* For these facilities, the annual GHG report must cover stationary fuel combustion sources (subpart C of this part), miscellaneous use of carbonates (subpart U of this part), and all applicable source categories listed in Table A–3 and Table A–4 of this subpart.

* * * * *

(4) *A supplier that is listed in Table A–5 of this subpart.* For these suppliers, the annual GHG report must cover all applicable products for which calculation methodologies are provided in the subparts listed in Table A–5 of this subpart.

* * * * *

(i) * * *

(3) * * * This paragraph (i)(3) does not apply to facilities with municipal solid waste landfills or industrial waste landfills, or to underground coal mines. * * *

* * * * *

■ 4. Section 98.3 is amended by:

a. Revising paragraph (b) introductory text.

b. Removing and reserving paragraph (b)(1).

c. Revising paragraphs (b)(2), (c)(4)(i), (c)(4)(ii), (c)(4)(iii) introductory text, (c)(7), and (i)(1) to read as follows.

§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?

* * * * *

(b) *Schedule.* The annual GHG report must be submitted no later than March

31 of each calendar year for GHG emissions in the previous calendar year. As an example, for a facility that is subject to the rule in calendar year 2010, the first report must be submitted on March 31, 2011.

(1) [Reserved]

(2) For a new facility or supplier that begins operation on or after January 1, 2010 and becomes subject to the rule in the year that it becomes operational, report emissions beginning with the first operating month and ending on December 31 of that year. Each subsequent annual report must cover emissions for the calendar year, beginning on January 1 and ending on December 31.

* * * * *

(c) * * *

(4) * * *

(i) Annual emissions (excluding biogenic CO_2) aggregated for all GHG from all applicable source categories listed in Tables A–3 and Table A–4 of this subpart and expressed in metric tons of CO_2e calculated using Equation A–1 of this subpart.

(ii) Annual emissions of biogenic CO_2 aggregated for all applicable source categories in listed in Tables A–3 and Table A–4 of this subpart.

(iii) Annual emissions from each applicable source category listed in Tables A–3 and Table A–4 of this subpart, expressed in metric tons of each GHG listed in paragraphs (c)(4)(iii)(A) through (c)(4)(iii)(E) of this section.

* * * * *

(7) A brief description of each "best available monitoring method" used according to paragraph (d) of this section, the parameter measured using the method, and the time period during which the "best available monitoring method" was used, if applicable.

* * * * *

(i) * * *

(1) Except as provided in paragraphs (i)(4) through (i)(6) of this section, flow meters and other devices (*e.g.*, belt scales) that measure data used to calculate GHG emissions shall be calibrated using the procedures specified in this paragraph and each relevant subpart of this part. All measurement devices must be calibrated according to the manufacturer's recommended procedures, an appropriate industry consensus standard, or a method specified in a relevant subpart of this part. All measurement devices shall be calibrated to an accuracy of 5 percent. For facilities and suppliers that are subject to this part on January 1, 2010, the initial calibration shall be conducted by April 1, 2010. For facilities and suppliers that become subject to this part after April 1, 2010, the initial calibration shall be conducted by the date that data collection is required to begin. Subsequent calibrations shall be performed at the frequency specified in each applicable subpart.

* * * * *

■ 5. Section 98.6 is amended by revising the definition of "anaerobic lagoon" and adding definitions for "Cement kiln dust," "Degasification system," "Destruction device," "Furnace slag," "Liberated," "Municipal wastewater treatment plant," "Ventilation well or shaft," "Ventilation system," and "Working capacity."

§ 98.6 Definitions.

* * * * *

Anaerobic lagoon, with respect to subpart JJ of this part, means a type of liquid storage system component that is designed and operated to stabilize wastes using anaerobic microbial processes. Anaerobic lagoons may be designed for combined stabilization and storage with varying lengths of retention time (up to a year or greater), depending on the climate region, volatile solids loading rate, and other operational factors.

* * * * *

Cement kiln dust means non-calcined to fully calcined dust produced in the kiln or pyroprocessing line. Cement kiln dust is a fine-grained, solid, highly alkaline material removed from the cement kiln exhaust gas by scrubbers (filtration baghouses and/or electrostatic precipitators).

* * * * *

Degasification system means the entirety of the equipment that is used to drain gas from underground and collect it at a common point, such as a vacuum pumping station. This includes all degasification wells and gob gas vent holes at the underground coal mine. Degasification systems include surface pre-mining, horizontal pre-mining, and post-mining systems.

* * * * *

Destruction device, for the purposes of subparts II and TT of this part, means a flare, thermal oxidizer, boiler, turbine, internal combustion engine, or any other combustion unit used to destroy or oxidize methane contained in landfill gas or wastewater biogas.

* * * * *

Furnace slag means a by-product formed in metal melting furnaces when slagging agents, reducing agents, and/or fluxes (*e.g.,* coke ash, limestone, silicates) are added to remove impurities from the molten metal.

* * * * *

Liberated means released from coal and surrounding rock strata during the mining process. This includes both methane emitted from the ventilation system and methane drained from degasification systems.

* * * * *

Municipal wastewater treatment plant means a series of treatment processes used to remove contaminants and pollutants from domestic, business, and industrial wastewater collected in city sewers and transported to a centralized wastewater treatment system such as a publicly owned treatment works (POTW).

* * * * *

Ventilation well or shaft means a well or shaft employed at an underground coal mine to serve as the outlet or conduit to move air from the ventilation system out of the mine.

Ventilation system means a system that is used to control the concentration of methane and other gases within mine working areas through mine ventilation, rather than a mine degasification system. A ventilation system consists of fans that move air through the mine workings to dilute methane concentrations. This includes all ventilation shafts and wells at the underground coal mine.

* * * * *

Working capacity, for the purposes of subpart TT of this part, means the maximum volume or mass of waste that is actually placed in the landfill from an individual or representative type of container (such as a tank, truck, or roll-off bin) used to convey wastes to the landfill, taking into account that the container may not be able to be 100 percent filled and/or 100 percent emptied for each load.

* * * * *

■ 6. Section 98.7 is amended by:

■ a. Revising paragraphs (d)(1) through (d)(5), and (d)(7) through (d)(10).

■ b. Revising paragraphs (e)(10), (e)(11), (e)(25), and (e)(42).

■ c. Adding paragraphs (e)(43) and (e)(44).

■ d. Revising paragraph (f)(2).

■ e. Adding paragraphs (k) through (m).

§ 98.7 What standardized methods are incorporated by reference into this part?

* * * * *

(d) * * *

(1) ASME MFC–3M–2004 Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi, incorporation by reference (IBR) approved for § 98.34(b), § 98.244(b),

§ 98.254(c), § 98.324(e), § 98.344(c), § 98.354(d), § 98.354(h), and § 98.364(e).

(2) ASME MFC–4M–1986 (Reaffirmed 1997) Measurement of Gas Flow by Turbine Meters, IBR approved for § 98.34(b), § 98.244(b), § 98.254(c), § 98.324(e), § 98.344(c), § 98.354(h), and § 98.364(e).

(3) ASME MFC–5M–1985 (Reaffirmed 1994) Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters, IBR approved for § 98.34(b) and § 98.244(b), and § 98.354(d).

(4) ASME MFC–6M–1998 Measurement of Fluid Flow in Pipes Using Vortex Flowmeters, IBR approved for § 98.34(b), § 98.244(b), § 98.254(c), § 98.324(e), § 98.344(c), § 98.354(h), and § 98.364(e).

(5) ASME MFC–7M–1987 (Reaffirmed 1992) Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles, IBR approved for § 98.34(b), § 98.244(b), § 98.254(c), § 98.324(e), § 98.344(c), § 98.354(h), and § 98.364(e).

* * * * *

(7) ASME MFC–11M–2006 Measurement of Fluid Flow by Means of Coriolis Mass Flowmeters, IBR approved for § 98.244(b), § 98.254(c), § 98.324(e), § 98.344(c), and § 98.354(h).

(8) ASME MFC–14M–2003 Measurement of Fluid Flow Using Small Bore Precision Orifice Meters, IBR approved for § 98.244(b), § 98.254(c), § 98.324(e), § 98.344(c), § 98.354(h), and § 98.364(e).

(9) ASME MFC–16–2007 Measurement of Liquid Flow in Closed Conduits with Electromagnetic Flowmeters, IBR approved for § 98.244(b) and § 98.354(d).

(10) ASME MFC–18M–2001 Measurement of Fluid Flow Using Variable Area Meters, IBR approved for § 98.244(b), § 98.254(c), § 98.324(e), § 98.344(c), § 98.354(h), and § 98.364(e).

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(e) * * *

(10) ASTM D1945–03 Standard Test Method for Analysis of Natural Gas by Gas Chromatography, IBR approved for § 98.34(b), § 98.74(c), § 98.164(b), § 98.324(d), § 98.244(b), § 98.254(d), § 98.344(b), and § 98.354(g).

(11) ASTM D1946–90 (Reapproved 2006) Standard Practice for Analysis of Reformed Gas by Gas Chromatography, IBR approved for § 98.34(b), § 98.74(c), § 98.164(b), § 98.254(d), § 98.324(d), § 98.344(b), § 98.354(g), and § 98.364(c).

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(25) ASTM D4891–89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion, IBR approved for § 98.34(a), § 98.254(e), and § 98.324(d).

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(42) ASTM UOP539–97 Refinery Gas Analysis by Gas Chromatography, IBR approved for § 98.164(b), § 98.244(b), § 98.254(d), § 98.324(d), § 98.344(b), and § 98.354(g).

(43) ASTM D1941–91 (Reapproved 2007) Standard Test Method for Open Channel Flow Measurement of Water with the Parshall Flume, approved June 15, 2007, IBR approved for § 98.354(d).

(44) ASTM D5614–94 (Reapproved 2008) Standard Test Method for Open Channel Flow Measurement of Water with Broad-Crested Weirs, approved October 1, 2008, IBR approved for § 98.354(d).

(f) * * *

(2) GPA 2261–00 Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography, IBR approved for § 98.34(a), § 98.164(b), § 98.254(d), § 98.344(b), and § 98.354(g).

* * * * *

(k) The following material is available for purchase from Standard Methods, at *http://www.standardmethods.org*, (877) 574–1233; or, through a joint publication agreement from the American Public Health Association (APHA), P.O. Box 933019, Atlanta, GA 31193–3019, (888) 320–APHA (2742), *http://www.apha.org/publications/pubscontact/*.

(1) Method 2540G Total, Fixed, and Volatile Solids in Solid and Semisolid Samples, IBR approved for § 98.464(b).

(2) [Reserved]

(l) The following material is available from the U.S. Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, 21st Floor, Arlington, VA 22209–3939, (202) 693–9400, *http://www.msha.gov.*

(1) General Coal Mine Inspection Procedures and Inspection Tracking System, Handbook Number: PH–08–V–1, January 1, 2008, IBR approved for § 98.324(b).

(2) [Reserved]

(m) The following material is available from the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 272–0167, *http://www.epa.gov.*

(1) NPDES Compliance Inspection Manual, Chapter 5, Sampling, EPA 305–X–04–001, July 2004, *http://www.epa.gov/compliance/monitoring/programs/cwa/npdes.html*, IBR approved for § 98.354(c).

(2) U.S. EPA NPDES Permit Writers' Manual, Section 7.1.3, Sample Collection Methods, EPA 833–B–96–003, December 1996, *http://www.epa.gov/npdes/pubs/owm0243.pdf*, IBR approved for § 98.354(c).

■ 7. Add Tables A–3, A–4, and A–5 to Subpart A to read as follows:

TABLE A–3 TO SUBPART A—SOURCE CATEGORY LIST FOR § 98.2(a)(1)

Source Categories[a] Applicable in 2010 and Future Years
Electricity generation units that report CO_2 mass emissions year round through 40 CFR part 75 (subpart D).
Adipic acid production (subpart E).
Aluminum production (subpart F).
Ammonia manufacturing (subpart G).
Cement production (subpart H).
HCFC–22 production (subpart O).
HFC–23 destruction processes that are not collocated with a HCFC–22 production facility and that destroy more than 2.14 metric tons of HFC–23 per year (subpart O).
Lime manufacturing (subpart S).
Nitric acid production (subpart V).
Petrochemical production (subpart X).
Petroleum refineries (subpart Y).
Phosphoric acid production (subpart Z).
Silicon carbide production (subpart BB).
Soda ash production (subpart CC).
Titanium dioxide production (subpart EE).
Municipal solid waste landfills that generate CH_4 in amounts equivalent to 25,000 metric tons CO_2e or more per year, as determined according to subpart HH of this part.

TABLE A–3 TO SUBPART A—SOURCE CATEGORY LIST FOR § 98.2(a)(1)—Continued

Manure management systems with combined CH_4 and N_2O emissions in amounts equivalent to 25,000 metric tons CO_2e or more per year, as determined according to subpart JJ of this part.
Additional Source Categories [a] Applicable in 2011 and Future Years
Underground coal mines that are subject to quarterly or more frequent sampling by Mine Safety and Health Administration (MSHA) of ventilation systems (subpart FF).

[a] Source categories are defined in each applicable subpart.

TABLE A–4 TO SUBPART A—SOURCE CATEGORY LIST FOR § 98.2(a)(2)

Source Categories [a] Applicable in 2010 and Future Years
Ferroalloy production (subpart K).
Glass production (subpart N).
Hydrogen production (subpart P).
Iron and steel production (subpart Q).
Lead production (subpart R).
Pulp and paper manufacturing (subpart AA).
Zinc production (subpart GG).
Additional Source Categories [a] Applicable in 2011 and Future Years
Magnesium production (subpart T).
Industrial wastewater treatment (subpart II).
Industrial waste landfills (subpart TT).

[a] Source categories are defined in each applicable subpart.

TABLE A–5 TO SUBPART A—SUPPLIER CATEGORY LIST FOR § 98.2(a)(4)

Supplier Categories [a] Applicable in 2010 and Future Years
Coal-to-liquids suppliers (subpart LL):
(A) All producers of coal-to-liquid products.
(B) Importers of an annual quantity of coal-to-liquid products that is equivalent to 25,000 metric tons CO_2e or more.
(C) Exporters of an annual quantity of coal-to-liquid products that is equivalent to 25,000 metric tons CO_2e or more.
Petroleum product suppliers (subpart MM):
(A) All petroleum refineries that distill crude oil.
(B) Importers of an annual quantity of petroleum products that is equivalent to 25,000 metric tons CO_2e or more.
(C) Exporters of an annual quantity of petroleum products that is equivalent to 25,000 metric tons CO_2e or more.
Natural gas and natural gas liquids suppliers (subpart NN):
(A) All fractionators.
(B) All local natural gas distribution companies.
Industrial greenhouse gas suppliers (subpart OO):
(A) All producers of industrial greenhouse gases.
(B) Importers of industrial greenhouse gases with annual bulk imports of N_2O, fluorinated GHG, and CO_2 that in combination are equivalent to 25,000 metric tons CO_2e or more.
(C) Exporters of industrial greenhouse gases with annual bulk exports of N_2O, fluorinated GHG, and CO_2 that in combination are equivalent to 25,000 metric tons CO_2e or more.
Carbon dioxide suppliers (subpart PP):
(A) All producers of CO_2.
(B) Importers of CO_2 with annual bulk imports of N_2O, fluorinated GHG, and CO_2 that in combination are equivalent to 25,000 metric tons CO_2e or more.
(C) Exporters of CO_2 with annual bulk exports of N_2O, fluorinated GHG, and CO_2 that in combination are equivalent to 25,000 metric tons CO_2e or more.
Additional Supplier Categories Applicable [a] in 2011 and Future Years
(Reserved)

[a] Suppliers are defined in each applicable subpart.

■ 8. Add subpart T to read as follows:

Subpart T—Magnesium Production

Sec.

Subpart T—Magnesium Production

§ 98.200 Definition of source category.

The magnesium production and processing source category consists of the following processes:

(a) Any process in which magnesium metal is produced through smelting (including electrolytic smelting), refining, or remelting operations.

(b) Any process in which molten magnesium is used in alloying, casting, drawing, extruding, forming, or rolling operations.

§ 98.201 Reporting threshold.

You must report GHG emissions under this subpart if your facility contains a magnesium production process and the facility meets the requirements of either § 98.2(a)(1) or (2).

§ 98.202 GHGs to report.

(a) You must report emissions of the following gases in metric tons per year resulting from their use as cover gases or carrier gases in magnesium production or processing:

(1) Sulfur hexafluoride (SF_6).

(2) HFC–134a.

(3) The fluorinated ketone, FK 5–1–12.

(4) Carbon dioxide (CO_2).

(5) Any other GHGs (as defined in § 98.6).

(b) You must report under subpart C of this part (General Stationary Fuel Combustion Sources) the CO_2, N_2O, and CH_4 emissions from each combustion unit by following the requirements of subpart C.

§ 98.203 Calculating GHG emissions.

(a) Calculate the mass of each GHG emitted from magnesium production or processing over the calendar year using either Equation T–1 or Equation T–2 of this section, as appropriate. Both of these equations equate emissions of cover gases or carrier gases to consumption of cover gases or carrier gases.

(1) To estimate emissions of cover gases or carrier gases by monitoring changes in container masses and inventories, emissions of each cover gas or carrier gas shall be estimated using Equation T–1 of this section:

$$E_x = \left(I_{B,x} - I_{E,x} + A_x - D_x\right) * 0.001 \qquad \text{(Eq. T-1)}$$

Where:

E_x = Emissions of each cover gas or carrier gas, X, in metric tons over the reporting year.

$I_{B,x}$ = Inventory of each cover gas or carrier gas stored in cylinders or other containers at the beginning of the year, including heels, in kg.

$I_{E,x}$ = Inventory of each cover gas or carrier gas stored in cylinders or other containers at the end of the year, including heels, in kg.

A_x = Acquisitions of each cover gas or carrier gas during the year through purchases or other transactions, including heels in cylinders or other containers returned to the magnesium production or processing facility, in kg.

D_x = Disbursements of each cover gas or carrier gas to sources and locations outside the facility through sales or other transactions during the year, including heels in cylinders or other containers returned by the magnesium production or processing facility to the gas supplier, in kg.

0.001 = Conversion factor from kg to metric tons

X = Each cover gas or carrier gas that is a GHG.

(2) To estimate emissions of cover gases or carrier gases by monitoring changes in the masses of individual containers as their contents are used, emissions of each cover gas or carrier gas shall be estimated using Equation T–2 of this section:

$$E_{GHG} = \sum_{p=1}^{n} Q_p * 0.001 \qquad \text{(Eq. T-2)}$$

Where:

E_{GHG} = Emissions of each cover gas or carrier gas, X, over the reporting year (metric tons).

Q_p = The mass of the cover or carrier gas consumed (kg) over the container-use period p, from Equation T–3 of this section.

n = The number of container-use periods in the year.

0.001 = Conversion factor from kg to metric tons.

X = Each cover gas or carrier gas that is a GHG.

(b) For purposes of Equation T–2 of this section, the mass of the cover gas used over the period p for an individual container shall be estimated by using Equation T–3 of this section:

$$Q_p = M_B - M_E \qquad \text{(Eq. T-3)}$$

Where:

Q_p = The mass of the cover or carrier gas consumed (kg) over the container-use period p (*e.g.,* one month).

M_B = The mass of the container's contents (kg) at the beginning of period p.

M_E = The mass of the container's contents (kg) at the end of period p.

(c) If a facility has mass flow controllers (MFC) and the capacity to track and record MFC measurements to estimate total gas usage, the mass of each cover or carrier gas monitored may be used as the mass of cover or carrier gas consumed (Q_p), in kg for period p in Equation T–2 of this section.

§ 98.204 Monitoring and QA/QC requirements.

(a) For calendar year 2011 monitoring, the facility may submit a request to the Administrator to use one or more best available monitoring methods as listed in § 98.3(d)(1)(i) through (iv). The request must be submitted no later than October 12, 2010 and must contain the information in § 98.3(d)(2)(ii). To obtain approval, the request must demonstrate to the Administrator's satisfaction that it is not reasonably feasible to acquire, install, and operate a required piece of monitoring equipment by January 1, 2011. The use of best available monitoring methods will not be approved beyond December 31, 2011.

(b) Emissions (consumption) of cover gases and carrier gases may be estimated by monitoring the changes in container weights and inventories using Equation T–1 of this subpart, by monitoring the changes in individual container weights as the contents of each container are used using Equations T–2 and T–3 of this subpart, or by monitoring the mass flow of the pure cover gas or carrier gas into the gas distribution system. Emissions must be estimated at least annually.

(c) When estimating emissions by monitoring the mass flow of the pure cover gas or carrier gas into the gas distribution system, you must use gas flow meters, or mass flow controllers, with an accuracy of 1 percent of full scale or better.

(d) When estimating emissions using Equation T–1 of this subpart, you must ensure that all the quantities required by Equation T–1 of this subpart have been measured using scales or load cells with an accuracy of 1 percent of full scale or better, accounting for the tare weights of the containers. You may accept gas masses or weights provided by the gas supplier *e.g.,* for the contents of containers containing new gas or for the heels remaining in containers returned to the gas supplier) if the supplier provides documentation verifying that accuracy standards are met; however you remain responsible for the accuracy of these masses or weights under this subpart.

(e) When estimating emissions using Equations T–2 and T–3 of this subpart, you must monitor and record container identities and masses as follows:

(1) Track the identities and masses of containers leaving and entering storage with check-out and check-in sheets and procedures. The masses of cylinders returning to storage shall be measured immediately before the cylinders are put back into storage.

(2) Ensure that all the quantities required by Equations T–2 and T–3 of this subpart have been measured using scales or load cells with an accuracy of 1 percent of full scale or better, accounting for the tare weights of the containers. You may accept gas masses or weights provided by the gas supplier *e.g.,* for the contents of cylinders containing new gas or for the heels remaining in cylinders returned to the gas supplier) if the supplier provides documentation verifying that accuracy standards are met; however, you remain responsible for the accuracy of these masses or weights under this subpart.

(f) All flowmeters, scales, and load cells used to measure quantities that are to be reported under this subpart shall be calibrated using calibration procedures specified by the flowmeter, scale, or load cell manufacturer. Calibration shall be performed prior to the first reporting year. After the initial calibration, recalibration shall be performed at the minimum frequency specified by the manufacturer.

§ 98.205 Procedures for estimating missing data.

(a) A complete record of all measured parameters used in the GHG emission calculations is required. Therefore, whenever a quality-assured value of a required parameter is unavailable, a substitute data value for the missing parameter will be used in the calculations as specified in paragraph (b) of this section.

(b) Replace missing data on the emissions of cover or carrier gases by multiplying magnesium production during the missing data period by the average cover or carrier gas usage rate from the most recent period when operating conditions were similar to those for the period for which the data are missing. Calculate the usage rate for each cover or carrier gas using Equation T–4 of this section:

$$R_{GHG} = C_{GHG} / Mg * 0.001 \qquad \text{(Eq. T-4)}$$

Where:

R_{GHG} = The usage rate for a particular cover or carrier gas over the period of comparable operation (metric tons gas/metric ton Mg).

C_{GHG} = The consumption of that cover or carrier gas over the period of comparable operation (kg).

Mg = The magnesium produced or fed into the process over the period of comparable operation (metric tons).

0.001 = Conversion factor from kg to metric tons.

(c) If the precise before and after weights are not available, it should be assumed that the container was emptied in the process (*i.e.,* quantity purchased should be used, less heel).

§ 98.206 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must include the following information at the facility level:

(a) Emissions of each cover or carrier gas in metric tons.

(b) Types of production processes at the facility (*e.g.,* primary, secondary, die casting).

(c) Amount of magnesium produced or processed in metric tons for each process type. This includes the output of primary and secondary magnesium production processes and the input to magnesium casting processes.

(d) Cover and carrier gas flow rate (*e.g.,* standard cubic feet per minute) for each production unit and composition in percent by volume.

(e) For any missing data, you must report the length of time the data were missing for each cover gas or carrier gas, the method used to estimate emissions in their absence, and the quantity of emissions thereby estimated.

(f) The annual cover gas usage rate for the facility for each cover gas, excluding the carrier gas (kg gas/metric ton Mg).

(g) If applicable, an explanation of any change greater than 30 percent in the facility's cover gas usage rate (*e.g.,* installation of new melt protection technology or leak discovered in the cover gas delivery system that resulted in increased emissions).

(h) A description of any new melt protection technologies adopted to account for reduced or increased GHG emissions in any given year.

§ 98.207 Records that must be retained.

In addition to the records specified in § 98.3(g), you must retain the following information at the facility level:

(a) Check-out and weigh-in sheets and procedures for gas cylinders.

(b) Accuracy certifications and calibration records for scales including the method or manufacturer's specification used for calibration.

(c) Residual gas amounts (heel) in cylinders sent back to suppliers.

(d) Records, including invoices, for gas purchases, sales, and disbursements for all GHGs.

§ 98.208 Definitions.

All terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part. Additionally, some sector-specific definitions are provided below:

Carrier gas means the gas with which cover gas is mixed to transport and dilute the cover gas thus maximizing its efficient use. Carrier gases typically include CO_2, N_2, and/or dry air.

Cover gas means SF_6, HFC–134a, fluorinated ketone (FK 5–1–12) or other gas used to protect the surface of molten magnesium from rapid oxidation and burning in the presence of air. The molten magnesium may be the surface of a casting or ingot production operation or the surface of a crucible of molten magnesium that feeds a casting operation.

■ 9. Add subpart FF to read as follows:

Subpart FF—Underground Coal Mines

Sec.

§ 98.320 Definition of the source category.

(a) This source category consists of active underground coal mines, and any underground mines under development that have operational pre-mining degasification systems. An underground coal mine is a mine at which coal is produced by tunneling into the earth to the coalbed, which is then mined with underground mining equipment such as cutting machines and continuous, longwall, and shortwall mining machines, and transported to the surface. Underground coal mines are categorized as active if any one of the following five conditions apply:

(1) Mine development is underway.

(2) Coal has been produced within the last 90 days.

(3) Mine personnel are present in the mine workings.

(4) Mine ventilation fans are operative.

(5) The mine is designated as an "intermittent" mine by the Mine Safety and Health Administration (MSHA).

(b) This source category includes the following:

(1) Each ventilation well or shaft, including both those wells and shafts where gas is emitted and those where gas is sold, used onsite, or otherwise destroyed (including by flaring).

(2) Each degasification system well or shaft, including degasification systems deployed before, during, or after mining operations are conducted in a mine area. This includes both those wells and shafts where gas is emitted, and those where gas is sold, used onsite, or otherwise destroyed (including by flaring).

(c) This source category does not include abandoned or closed mines, surface coal mines, or post-coal mining activities (*e.g.,* storage or transportation of coal).

§ 98.321 Reporting threshold.

You must report GHG emissions under this subpart if your facility contains an active underground coal mine and the facility meets the requirements of § 98.2(a)(1).

§ 98.322 GHGs to report.

(a) You must report CH_4 liberated from ventilation and degasification systems.

(b) You must report CH_4 destruction from systems where gas is sold, used onsite, or otherwise destroyed (including by flaring).

(c) You must report net CH_4 emissions from ventilation and degasification systems.

(d) You must report under this subpart the CO_2 emissions from coal mine gas CH_4 destruction occuring at the facility, where the gas is not a fuel input for energy generation or use (*e.g.,* flaring).

(e) You must report under subpart C of this part (General Stationary Fuel Combustion Sources) the CO_2, CH_4, and N_2O emissions from each stationary fuel combustion unit by following the requirements of subpart C. Report emissions from both the combustion of collected coal mine CH_4 and any other fuels.

(f) An underground coal mine that is subject to this part because emissions from source categories described in subparts C through PP of this part is not required to report emissions under subpart FF of this part unless the coal mine is subject to quarterly or more frequent sampling of ventilation systems by MSHA.

§ 98.323 Calculating GHG emissions.

(a) For each ventilation shaft, vent hole, or centralized point into which CH_4 from multiple shafts and/or vent holes are collected, you must calculate the quarterly CH_4 liberated from the ventilation system using Equation FF–1 of this section. You must measure CH_4 content, flow rate, temperature, pressure, and moisture content of the gas using the procedures outlined in § 98.324.

$$CH_{4V} = n * \left(V * MCF * \frac{C}{100\%} * 0.0423 * \frac{520^{o}R}{T} * \frac{P}{1\ atm} * 1,440 * \frac{0.454}{1,000} \right) \quad \text{(Eq. FF-1)}$$

Where:

CH_{4V} = Quarterly CH_4 liberated from a ventilation monitoring point (metric tons CH_4).

V = Daily volumetric flow rate for the quarter (scfm) based on sampling or a flow rate meter. If a flow rate meter is used and the meter automatically corrects for temperature and pressure, replace "520 °R/T × P/1 atm" with "1".

MCF = Moisture correction factor for the measurement period, volumetric basis.
= 1 when V and C are measured on a dry basis or if both are measured on a wet basis.
= 1-$(f_{H_2O})_n$ when V is measured on a wet basis and C is measured on a dry basis.
= 1/[1-(f_{H_2O})] when V is measured on a dry basis and C is measured on a wet basis.

(f_{H_2O}) = Moisture content of the methane emitted during the measurement period, volumetric basis (cubic feet water per cubic feet emitted gas).

C = Daily CH_4 concentration of ventilation gas for the quarter (%, wet basis).

n = The number of days in the quarter where active ventilation of mining operations is taking place at the monitoring point.

0.0423 = Density of CH_4 at 520 °R (60 °F) and 1 atm (lb/scf).

520 °R = 520 degrees Rankine.

T = Temperature at which flow is measured (°R) for the quarter.

P = Pressure at which flow is measured (atm) for the quarter.

1,440 = Conversion factor (min/day).

0.454/1,000 = Conversion factor (metric ton/lb).

(1) Consistent with MSHA inspections, the quarterly periods are:
(i) January 1–March 31.
(ii) April 1–June 30.
(iii) July 1–September 30.
(iv) October 1–December 31.

(2) Daily values of V, MCF, C, T, and P must be based on measurements taken at least once each quarter with no fewer than 6 weeks between measurements. If measurements are taken more frequently than once per quarter, then use the average value for all measurements taken. If continous measurements are taken, then use the average value over the time period of continuous monitoring.

(3) If a facility has more than one monitoring point, the facility must calculate total CH_4 liberated from ventilation systems ($CH_{4VTotal}$) as the sum of the CH_4 from all ventilation monitoring points in the mine, as follows:

$$CH_{4VTotal} = \sum_{i=1}^{m} (CH_{4V})_i \quad \text{(Eq. FF-2)}$$

Where:

$CH_{4VTotal}$ = Total quarterly CH_4 liberated from ventilation systems (metric tons CH_4).

CH_{4V} = Quarterly CH_4 liberated from each ventilation monitoring point (metric tons CH_4).

m = Number of ventilation monitoring points.

(b) For each monitoring point in the degasification system (this could be at each degasification well and/or vent hole, or at more centralized points into which CH_4 from multiple wells and/or vent holes are collected), you must calculate the weekly CH_4 liberated from the mine using CH_4 measured weekly or more frequently (including by CEMS) according to 98.234(c), CH_4 content, flow rate, temperature, pressure, and moisture content, and Equation FF–3 of this section.

$$CH_{4D} = \sum_{i=1}^{n} \left(V_i * MCF_i * \frac{C_i}{100\%} * 0.0423 * \frac{520^{o}R}{T} * \frac{P_i}{1\ atm} * 1,440 * \frac{0.454}{1,000} \right) \quad \text{(Eq. FF-3)}$$

Where:

CH_{4D} = Weekly CH_4 liberated from at the monitoring point (metric tons CH_4).

V_i = Daily measured total volumetric flow rate for the days in the week when the degasification system is in operation at that monitoring point, based on sampling or a flow rate meter (scfm). If a flow rate meter is used and the meter automatically corrects for temperature and pressure, replace "520 °R/T_i × P_i/1 atm" with "1".

MCF_i = Moisture correction factor for the measurement period, volumetric basis.
= 1 when V_i and C_i are measured on a dry basis or if both are measured on a wet basis.
= 1-$(fH_2O)_i$ when V_i is measured on a wet basis and C_i is measured on a dry basis.
= 1/[1-$(fH_2O)_i$] when V_i is measured on a dry basis and C_i is measured on a wet basis.

(fH_2O) = Moisture content of the CH_4 emitted during the measurement period, volumetric basis (cubic feet water per cubic feet emitted gas)

C_i = Daily CH_4 concentration of gas for the days in the week when the degasification system is in operation at that monitoring point (%, wet basis).

n = The number of days in the week that the system is operational at that measurement point.

0.0423 = Density of CH_4 at 520 °R (60 °F) and 1 atm (lb/scf).

520 °R = 520 degrees Rankine.

T_i = Daily temperature at which flow is measured (°R).
P_i = Daily pressure at which flow is measured (atm).
1,440 = Conversion factor (minutes/day).
0.454/1,000 = Conversion factor (metric ton/lb).

(1) Daily values for V, MCF, C, T, and P must be based on measurements taken at least once each calendar with at least 3 days between measurements. If measurements are taken more frequently than once per week, then use the average value for all measurements taken that week. If continuous measurements are taken, then use the average values over the time period of continuous monitoring when the continuous monitoring equipment is properly functioning.

(2) Quarterly total CH_4 liberated from degasification systems for the mine should be determined as the sum of CH_4 liberated determined at each of the monitoring points in the mine, summed over the number of weeks in the quarter, as follows:

$$CH_{4DTotal} = \sum_{i=1}^{m}\sum_{j=1}^{w}\left(CH_{4D}\right)_{i,j} \qquad \text{(Eq. FF-4)}$$

Where:
$CH_{4DTotal}$ = Quarterly CH_4 liberated from all degasification monitoring points (metric tons CH_4).
CH_{4D} = Weekly CH_4 liberated from a degasification monitoring point (metric tons CH_4).
m = Number of monitoring points.
w = Number of weeks in the quarter during which the degasification system is operated.

(c) If gas from degasification system wells or ventilation shafts is sold, used onsite, or otherwise destroyed (including by flaring), you must calculate the quarterly CH_4 destroyed for each destruction device and each point of offsite transport to a destruction device, using Equation FF–5 of this section. You must measure CH_4 content and flow rate according to the provisions in § 98.324.

$$CH_{4Destroyed} = CH_4 \times DE \qquad \text{(Eq. FF-5)}$$

Where:
$CH_{4Destroyed}$ = Quarterly CH_4 destroyed (metric tons).
CH_4 = Quarterly CH_4 routed to the destruction device or offsite transfer point (metric tons).
DE = Destruction efficiency (lesser of manufacturer's specified destruction efficiency and 0.99). If the gas is transported off-site for destruction, use DE = 1.

(1) Calculate total CH_4 destroyed as the sum of the methane destroyed at all destruction devices (onsite and offsite), using Equation FF–6 of this section.

$$CH_{4Destroyed\ Total} = \sum_{i=1}^{d}\left(CH_{4\,Destroyed}\right)_d \qquad \text{(Eq. FF-6)}$$

Where:
$CH_{4DestroyedTotal}$ = Quarterly total CH_4 destroyed at the mine (metric tons CH_4).
$CH_{4Destroyed}$ = Quarterly CH_4 destroyed from each destruction device or offsite transfer point.
d = Number of onsite destruction devices and points of offsite transport.

(2) [Reserved]

(d) You must calculate the quarterly measured net CH_4 emissions to the atmosphere using Equation FF–7 of this section.

$$CH_4 \text{ emitted (net)} = CH_{4VTotal} + CH_{4DTotal} - CH_{4destroyedTotal} \qquad \text{(Eq. FF-7)}$$

Where:
CH_4 emitted (net)= Quarterly CH_4 emissions from the mine (metric tons).
$CH_{4VTotal}$ = Quarterly sum of the CH_4 liberated from all mine ventilation monitoring points (CH_{4V}), calculated using Equation FF–2 of this section (metric tons).
$CH_{4DTotal}$ = Quarterly sum of the CH_4 liberated from all mine degasification monitoring points (CH_{4D}), calculated using Equation FF–4 of this section (metric tons).
$CH_{4DestroyedTotal}$ = Quarterly sum of the measured CH_4 destroyed from all mine ventilation and degasification systems, calculated using Equation FF–6 of this section (metric tons).

(e) For the methane collected from degasification and/or ventilation systems that is destroyed on site and is not a fuel input for energy generation or use (those emissions are monitored and reported under Subpart C of this part), you must estimate the CO_2 emissions using Equation FF–8 of this section.

$$CO_2 = CH_{4Destroyedonsite} * 44/16 \qquad \text{(Eq. FF-8)}$$

Where:
CO_2 = Total quarterly CO_2 emissions from CH_4 destruction (metric tons).
$CH_{4Destroyedonsite}$ = Quarterly sum of the CH_4 destroyed, calculated as the sum of CH_4 destroyed for each onsite, non-energy use, as calculated individually in Equation FF–5 of this section (metric tons).
44/16 = Ratio of molecular weights of CO_2 to CH_4.

§ 98.324 Monitoring and QA/QC requirements.

(a) For calendar year 2011 monitoring, the facility may submit a request to the Administrator to use one or more best available monitoring methods as listed in § 98.3(d)(1)(i) through (iv). The request must be submitted no later than October 12, 2010 and must contain the information in § 98.3(d)(2)(ii). To obtain approval, the request must demonstrate to the Administrator's satisfaction that it is not reasonably feasible to acquire,

install, and operate a required piece of monitoring equipment by January 1, 2011. The use of best available monitoring methods will not be approved beyond December 31, 2011.

(b) For CH_4 liberated from ventilation systems, determine whether CH_4 will be monitored from each ventilation well and shaft, from a centralized monitoring point, or from a combination of the two options. Operators are allowed flexibility for aggregating emissions from more than one ventilation well or shaft, as long as emissions from all are addressed, and the methodology for calculating total emissions documented. Monitor by one of the following options:

(1) Collect quarterly or more frequent grab samples (with no fewer than 6 weeks between measurements) and make quarterly measurements of flow rate, temperature, and pressure. The sampling and measurements must be made at the same locations as MSHA inspection samples are taken, and should be taken when the mine is operating under normal conditions. You must follow MSHA sampling procedures as set forth in the MSHA Handbook entitled, General Coal Mine Inspection Procedures and Inspection Tracking System Handbook Number: PH–08–V–1, January 1, 2008 (incorporated by reference, *see* § 98.7). You must record the date of sampling, airflow, temperature, and pressure measured, the hand-held methane and oxygen readings (percent), the bottle number of samples collected, and the location of the measurement or collection.

(2) Obtain results of the quarterly (or more frequent) testing performed by MSHA.

(3) Monitor emissions through the use of one or more continuous emission monitoring systems (CEMS). If operators use CEMS as the basis for emissions reporting, they must provide documentation on the process for using data obtained from their CEMS to estimate emissions from their mine ventilation systems.

(c) For CH_4 liberated at degasification systems, determine whether CH_4 will be monitored from each well and gob gas vent hole, from a centralized monitoring point, or from a combination of the two options. Operators are allowed flexibility for aggregating emissions from more than one well or gob gas vent hole, as long as emissions from all are addressed, and the methodology for calculating total emissions documented. Monitor both gas volume and methane concentration by one of the following two options:

(1) Monitor emissions through the use of one or more continuous emissions monitoring systems (CEMS).

(2) Collect weekly (once each calendar week, with at least three days between measurements) or more frequent samples, for all degasification wells and gob gas vent holes. Determine weekly or more frequent flow rates and methane composition from these degasification wells and gob gas vent holes. Methane composition should be determined either by submitting samples to a lab for analysis, or from the use of methanometers at the degasification well site. Follow the sampling protocols for sampling of methane emissions from ventilation shafts, as described in § 98.324(b)(1).

(d) Monitoring must adhere to ASTM D1945–03, Standard Test Method for Analysis of Natural Gas by Gas Chromatography; ASTM D1946–90 (Reapproved 2006), Standard Practice for Analysis of Reformed Gas by Gas Chromatography; ASTM D4891–89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion; or ASTM UOP539–97 Refinery Gas Analysis by Gas Chromatography (incorporated by reference, *see* § 98.7).

(e) All fuel flow meters, gas composition monitors, and heating value monitors that are used to provide data for the GHG emissions calculations shall be calibrated prior to the first reporting year, using the applicable methods specified in paragraphs (e)(1) through (7) of this section. Alternatively, calibration procedures specified by the flow meter manufacturer may be used. Fuel flow meters, gas composition monitors, and heating value monitors shall be recalibrated either annually or at the minimum frequency specified by the manufacturer, whichever is more frequent. For fuel, flare, or sour gas flow meters, the operator shall operate, maintain, and calibrate the flow meter using any of the following test methods or follow the procedures specified by the flow meter manufacturer. Flow meters must meet the accuracy requirements in § 98.3(i).

(1) ASME MFC–3M–2004, Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi (incorporated by reference, *see* § 98.7).

(2) ASME MFC–4M–1986 (Reaffirmed 1997), Measurement of Gas Flow by Turbine Meters (incorporated by reference, *see* § 98.7).

(3) ASME MFC–6M–1998, Measurement of Fluid Flow in Pipes Using Vortex Flowmeters (incorporated by reference, *see* § 98.7).

(4) ASME MFC–7M–1987 (Reaffirmed 1992), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles (incorporated by reference, *see* § 98.7).

(5) ASME MFC–11M–2006 Measurement of Fluid Flow by Means of Coriolis Mass Flowmeters (incorporated by reference, *see* § 98.7).

(6) ASME MFC–14M–2003 Measurement of Fluid Flow Using Small Bore Precision Orifice Meters (incorporated by reference, *see* § 98.7).

(7) ASME MFC–18M–2001 Measurement of Fluid Flow using Variable Area Meters (incorporated by reference, *see* § 98.7).

(f) For CH_4 destruction, CH_4 must be monitored at each onsite destruction device and each point of offsite transport for combustion using continuous monitors of gas routed to the device or point of offsite transport.

(g) All temperature and pressure monitors must be calibrated using the procedures and frequencies specified by the manufacturer.

(h) If applicable, the owner or operator shall document the procedures used to ensure the accuracy of gas flow rate, gas composition, temperature, and pressure measurements. These procedures include, but are not limited to, calibration of fuel flow meters, and other measurement devices. The estimated accuracy of measurements, and the technical basis for the estimated accuracy shall be recorded.

§ 98.325 Procedures for estimating missing data.

(a) A complete record of all measured parameters used in the GHG emissions calculations is required. Therefore, whenever a quality-assured value of a required parameter is unavailable (*e.g.,* if a meter malfunctions during unit operation or if a required fuel sample is not taken), a substitute data value for the missing parameter shall be used in the calculations, in accordance with paragraph (b) of this section.

(b) For each missing value of CH_4 concentration, flow rate, temperature, and pressure for ventilation and degasification systems, the substitute data value shall be the arithmetic average of the quality-assured values of that parameter immediately preceding and immediately following the missing data incident. If, for a particular parameter, no quality-assured data are available prior to the missing data incident, the substitute data value shall be the first quality-assured value obtained after the missing data period.

§ 98.326 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report

must contain the following information for each mine:

(a) Quarterly CH_4 liberated from each ventilation monitoring point (CH_{4Vm}), (metric tons CH_4).

(b) Weekly CH_4 liberated from each degasification system monitoring point (metric tons CH_4).

(c) Quarterly CH_4 destruction at each ventilation and degasification system destruction device or point of offsite transport (metric tons CH_4).

(d) Quarterly CH_4 emissions (net) from all ventilation and degasification systems (metric tons CH_4).

(e) Quarterly CO_2 emissions from on-site destruction of coal mine gas CH_4, where the gas is not a fuel input for energy generation or use (*e.g.,* flaring) (metric tons CO_2).

(f) Quarterly volumetric flow rate for each ventilation monitoring point (scfm), date and location of each measurement, and method of measurement (quarterly sampling or continuous monitoring).

(g) Quarterly CH_4 concentration for each ventilation monitoring point, dates and locations of each measurement and method of measurement (sampling or continuous monitoring).

(h) Weekly volumetric flow used to calculate CH_4 liberated from degasification systems (scf) and method of measurement (sampling or continuous monitoring).

(i) Quarterly CEMS CH_4 concentration (%) used to calculate CH_4 liberated from degasification systems (average from daily data), or quarterly CH_4 concentration data based on results from weekly sampling data) (C).

(j) Weekly volumetric flow used to calculate CH_4 destruction for each destruction device and each point of offsite transport (scf).

(k) Weekly CH_4 concentration (%) used to calculate CH_4 destruction (C).

(l) Dates in quarterly reporting period where active ventilation of mining operations is taking place.

(m) Dates in quarterly reporting period where degasification of mining operations is taking place.

(n) Dates in quarterly reporting period when continuous monitoring equipment is not properly functioning, if applicable.

(o) Temperatures (°R) and pressure (atm) at which each sample is collected.

(p) For each destruction device, a description of the device, including an indication of whether destruction occurs at the coal mine or off-site. If destruction occurs at the mine, also report an indication of whether a back-up destruction device is present at the mine, the annual operating hours for the primary destruction device, the annual operating hours for the back-up destruction device (if present), and the destruction efficiencies assumed (percent).

(q) A description of the gas collection system (manufacturer, capacity, and number of wells) the surface area of the gas collection system (square meters), and the annual operating hours of the gas collection system.

(r) Identification information and description for each well and shaft, indication of whether the well or shaft is monitored individually, or as part of a centralized monitoring point. Note which method (sampling or continuous monitoring) was used.

(s) For each centralized monitoring point, identification of the wells and shafts included in the point. Note which method (sampling or continuous monitoring) was used.

§ 98.327 Records that must be retained.

In addition to the information required by § 98.3(g), you must retain the following records:

(a) Calibration records for all monitoring equipment, including the method or manufacturer's specification used for calibration.

(b) Records of gas sales.

(c) Logbooks of parameter measurements.

(d) Laboratory analyses of samples.

§ 98.328 Definitions.

All terms used in this subpart have the same meaning given in the Clean Air Act and subpart A of this part.

■ 10. Add subpart II to read as follows.

Subpart II—Industrial Wastewater Treatment

Sec.

Subpart II—Industrial Wastewater Treatment

§ 98.350 Definition of source category.

(a) This source category consists of anaerobic processes used to treat industrial wastewater and industrial wastewater treatment sludge at facilities that perform the operations listed in this paragraph.

(1) Pulp and paper manufacturing.

(2) Food processing.

(3) Ethanol production.

(4) Petroleum refining.

(b) An *anaerobic process* is a procedure in which organic matter in wastewater, wastewater treatment sludge, or other material is degraded by micro organisms in the absence of oxygen, resulting in the generation of CO_2 and CH_4. This source category consists of the following: anaerobic reactors, anaerobic lagoons, anaerobic sludge digesters, and biogas destruction devices (for example, burners, boilers, turbines, flares, or other devices).

(1) An *anaerobic reactor* is an enclosed vessel used for anaerobic wastewater treatment (*e.g.,* upflow anaerobic sludge blanket, fixed film).

(2) An *anaerobic sludge digester* is an enclosed vessel in which wastewater treatment sludge is degraded anaerobically.

(3) An *anaerobic lagoon* is a lined or unlined earthen basin used for wastewater treatment, in which oxygen is absent throughout the depth of the basin, except for a shallow surface zone. Anaerobic lagoons are not equipped with surface aerators. Anaerobic lagoons are classified as deep (depth more than 2 meters) or shallow (depth less than 2 meters).

(c) This source category does not include municipal wastewater treatment plants or separate treatment of sanitary wastewater at industrial sites.

§ 98.351 Reporting threshold.

You must report GHG emissions under this subpart if your facility meets all of the conditions under paragraphs (a) or (b) of this section:

(a) *Petroleum refineries and pulp and paper manufacturing.*

(1) The facility is subject to reporting under subpart Y of this part (Petroleum Refineries) or subpart AA of this part (Pulp and Paper Manufacturing).

(2) The facility meets the requirements of either § 98.2(a)(1) or (2).

(3) The facility operates an anaerobic process to treat industrial wastewater and/or industrial wastewater treatment sludge.

(b) *Ethanol production and food processing facilities.*

(1) The facility performs an ethanol production or food processing operation, as defined in § 98.358 of this subpart.

(2) The facility meets the requirements of § 98.2(a)(2).

(3) The facility operates an anaerobic process to treat industrial wastewater and/or industrial wastewater treatment sludge.

§ 98.352 GHGs to report.

(a) You must report CH_4 generation, CH_4 emissions, and CH_4 recovered from treatment of industrial wastewater at each anaerobic lagoon and anaerobic reactor.

(b) You must report CH_4 emissions and CH_4 recovered from each anaerobic sludge digester.

(c) You must report CH_4 emissions and CH_4 destruction resulting from each biogas collection and biogas destruction device.

(d) You must report under subpart C of this part (General Stationary Fuel Combustion Sources) the emissions of CO_2, CH_4, and N_2O from each stationary combustion unit associated with the landfill gas destruction device, if present, by following the requirements of subpart C of this part.

§ 98.353 Calculating GHG emissions.

(a) For each anaerobic reactor and anaerobic lagoon, estimate the annual mass of CH_4 generated according to the applicable requirements in paragraphs (a)(1) through (a)(2) of this section.

(1) If you measure the concentration of organic material entering the anaerobic reactors or anaerobic lagoon using methods for the determination of chemical oxygen demand (COD), then estimate annual mass of CH_4 generated using Equation II–1 of this section.

$$CH_4G_n = \sum_{w=1}^{52}\left[Flow_w * COD_w * B_o * MCF * 0.001\right] \qquad \text{(Eq. II-1)}$$

Where:

CH_4G_n = Annual mass CH_4 generated from the nth anaerobic wastewater treatment process (metric tons).

n = Index for processes at the facility, used in Equation II–7.

w = Index for weekly measurement period.

$Flow_w$ = Volume of wastewater sent to an anaerobic wastewater treatment process in week w (m^3/week), measured as specified in § 98.354(d).

COD_w = Average weekly concentration of chemical oxygen demand of wastewater entering an anaerobic wastewater treatment process (for week w)(kg/m^3), measured as specified in § 98.354(b) and (c).

B_0 = Maximum CH_4 producing potential of wastewater (kg CH_4/kg COD), use the value 0.25.

MCF = CH_4 conversion factor, based on relevant values in Table II–1 of this subpart.

0.001 = Conversion factor from kg to metric tons.

(2) If you measure the concentration of organic material entering the anaerobic reactors or anaerobic lagoon using methods for the determination of 5-day biochemical oxygen demand (BOD_5), then estimate annual mass of CH_4 generated using Equation II–2 of this section.

$$CH_4G_n = \sum_{w=1}^{52}\left[Flow_w * BOD_{5,w} * B_o * MCF * 0.001\right] \qquad \text{(Eq. II-2)}$$

Where:

CH_4G_n = Annual mass of CH_4 generated from the anaerobic wastewater treatment process (metric tons).

n = Index for processes at the facility, used in Equation II–7.

w = Index for weekly measurement period.

$Flow_w$ = Volume of wastewater sent to an anaerobic wastewater treatment process in week w(m^3/week), measured as specified in § 98.354(d).

$BOD_{5,w}$ = Average weekly concentration of 5-day biochemical oxygen demand of wastewater entering an anaerobic wastewater treatment process for week w(kg/m^3), measured as specified in § 98.354(b) and (c).

B_0 = Maximum CH_4 producing potential of wastewater (kg CH_4/kg BOD_5), use the value 0.6.

MCF = CH_4 conversion factor, based on relevant values in Table II–1 of this subpart.

0.001 = Conversion factor from kg to metric tons.

(b) For each anaerobic reactor and anaerobic lagoon from which biogas is not recovered, estimate annual CH_4 emissions using Equation II–3 of this section.

$$CH_4E_n = CH_4G_n \qquad \text{(Eq. II-3)}$$

Where:

CH_4E_n = Annual mass of CH_4 emissions from the wastewater treatment process n from which biogas is not recovered (metric tons).

CH_4G_n = Annual mass of CH_4 generated from the wastewater treatment process n, as calculated in Equation II–1 or II–2 of this section (metric tons).

(c) For each anaerobic digester, anaerobic reactor, or anaerobic lagoon from which some biogas is recovered, estimate the annual mass of CH_4 recovered according to the requirements in paragraphs (c)(1) and (c)(2) of this section. To estimate the annual mass of CH_4 recovered, you must continuously monitor gas flow rate as specified in § 98.354(f) and (h).

(1) If you continuously monitor CH_4 concentration (and if necessary, temperature, pressure, and moisture content required as specified in § 98.354(f)) of the biogas that is collected and routed to a destruction device using a monitoring meter specifically for CH_4 gas, as specified in § 98.354(g), you must use this monitoring system and calculate the quantity of CH_4 recovered for destruction using Equation II–4 of this section. A fully integrated system that directly reports CH_4 content requires only the summing of results of all monitoring periods for a given year.

$$R_n = \sum_{m=1}^{M}\left[(V)_m * (K_{MC})_m * \frac{(C_{CH4})_m}{100\%} * 0.0423 * \frac{520^oR}{(T)_m} * \frac{(P)_m}{1\ atm} * \frac{0.454}{1{,}000}\right] \qquad \text{(Eq. II-4)}$$

Where:

R_n = Annual quantity of CH_4 recovered from the nth anaerobic reactor, digester, or lagoon (metric tons CH_4/yr)

n = Index for processes at the facility, used in Equation II–7.

M = Total number of measurement periods in a year. Use M = 365 (M = 366 for leap years) for daily averaging of continuous monitoring, as provided in paragraph (c)(1)of this section. Use M = 52 for weekly sampling, as provided in paragraph (c)(2)of this section.

m = Index for measurement period.

V_m = Cumulative volumetric flow for the measurement period in actual cubic feet (acf). If no biogas was recovered during a monitoring period, use zero.

$(K_{MC})_m$ = Moisture correction term for the measurement period, volumetric basis.

= 1 when $(V)_m$ and $(C_{CH4})_m$ are measured on a dry basis or if both are measured on a wet basis.

= $1-(f_{H2O})_m$ when $(V)_m$ is measured on a wet basis and $(C_{CH4})_m$ is measured on a dry basis.

= $1/[1-(f_{H2O})_m]$ when $(V)_m$ is measured on a dry basis and $(C_{CH4})_m$ is measured on a wet basis.

$(f_{H2O})_m$ = Average moisture content of biogas during the measurment period, volumetric basis, (cubic feet water per cubic feet biogas).

$(C_{CH4})_m$ = Average CH_4 concentration of biogas during the measurement period, (volume %).

0.0423 = Density of CH_4 lb/cf at 520 °R or 60 °F and 1 atm.

520 °R = 520 degrees Rankine.

T_m = Temperature at which flow is measured for the measurement period (°R). If the flow rate meter automatically corrects for temperature replace "520 °R/T_m" with "1".

P_m = Pressure at which flow is measured for the measurement period (atm). If the flow rate meter automatically corrects for pressure, replace "P_m/1" with "1".

0.454/1,000 = Conversion factor (metric ton/lb).

(2) If you do not continuously monitor CH_4 concentration according to paragraph (c)(1) of this section, you must determine the CH_4 concentration, temperature, pressure, and, if necessary, moisture content of the biogas that is collected and routed to a destruction device according to the requirements in paragraphs (c)(2)(i) through (c)(2)(iii) of this section and calculate the quantity of CH_4 recovered for destruction using Equation II–4 of this section.

(i) Continuously monitor gas flow rate and determine the volume of biogas each week and the cumulative volume of biogas each year that is collected and routed to a destruction device. If the gas flow meter is not equipped with automatic correction for temperature, pressure, or, if necessary, moisture content, you must determine these parameters as specified in paragraph (c)(2)(iii) of this section.

(ii) Determine the CH_4 concentration in the biogas that is collected and routed to a destruction device in a location near or representative of the location of the gas flow meter once each calendar week, with at least three days between measurements. For a given calendar week, you are not required to determine CH_4 concentration if the cumulative volume of biogas for that calendar week, determined as specified in paragraph (c)(2)(i) of this section, is zero.

(iii) If the gas flow meter is not equipped with automatic correction for temperature, pressure, or, if necessary, moisture content:

(A) Determine the temperature and pressure in the biogas that is collected and routed to a destruction device in a location near or representative of the location of the gas flow meter once each calendar week, with at least three days between measurements.

(B) If the CH_4 concentration is determined on a dry basis and biogas flow is determined on a wet basis, or CH_4 concentration is determined on a wet basis and biogas flow is determined on a dry basis, and the flow meter does not automatically correct for moisture content, determine the moisture content in the biogas that is collected and routed to a destruction device in a location near or representative of the location of the gas flow meter once each calendar week that the cumulative biogas flow measured as specified in § 98.354(h) is greater than zero, with at least three days between measurements.

(d) For each anaerobic digester, anaerobic reactor, or anaerobic lagoon from which some quantity of biogas is recovered, you must estimate both the annual mass of CH_4 that is generated, but not recovered, according to paragraph (d)(1) of this section and the annual mass of CH_4 emitted according to paragraph (d)(2) of this section.

(1) Estimate the annual mass of CH_4 that is generated, but not recovered, using Equation II–5 of this section.

$$CH_4L_n = R_n * \left(\frac{1}{CE} - 1\right) \qquad \text{(Eq. II-5)}$$

Where:

CH_4L_n = Leakage at the anaerobic process n (metric tons CH_4).

n = Index for processes at the facility, used in Equation II–7.

R_n = Annual quantity of CH_4 recovered from the nth anaerobic reactor, anaerobic lagoon, or anaerobic digester, as calculated in Equation II–4 of this section (metric tons CH_4).

CE = CH_4 collection efficiency of anaerobic process n, as specified in Table II–2 of this subpart (decimal).

(2) For each anaerobic digester, anaerobic reactor, or anaerobic lagoon from which some quantity of biogas is recovered, estimate the annual mass of CH_4 emitted using Equation II–6 of this section.

$$CH_4E_n = CH_4L_n + R_n\left(1-\left(DE_1 * f_{Dest\_1}\right)\right) + R_n\left(1-\left(DE_2 * f_{Dest\_2}\right)\right) \qquad \text{(Eq. II-6)}$$

Where:

CH_4E_n = Annual quantity of CH_4 emitted from the process n from which biogas is recovered (metric tons/yr).

n = Index for processes at the facility, used in Equation II–7.

CH_4L_n = Leakage at the anaerobic process n, as calculated in Equation II–5 of this section (metric tons CH_4).

R_n = Annual quantity of CH_4 recovered from the nth anaerobic reactor or anaerobic digester, as calculated in Equation II–4 of this section (metric tons CH_4).

DE_1 = Primary destruction device CH_4 destruction efficiency (lesser of manufacturer's specified destruction efficiency and 0.99). If the gas is transported off-site for destruction, use DE = 1.

f_{Dest_1} = Fraction of hours the primary destruction device was operating (device operating hours/hours in the year). If the gas is transported off-site for destruction, use f_{Dest} = 1.

DE_2 = Back-up destruction device CH_4 destruction efficiency (lesser of manufacturer's specified destruction efficiency and 0.99).

f_{Dest_2} = Fraction of hours the back-up destruction device was operating (device operating hours/hours in the year).

(e) Estimate the total mass of CH_4 emitted from all anaerobic processes from which biogas is not recovered (calculated in Eq. II–3) and all anaerobic processes from which some biogas is recovered (calculated in Equation II–6) using Equation II–7 of this section.

$$CH_4E_T = \sum_{n=1}^{j} CH_4E_n \qquad \text{(Eq. II-7)}$$

Where:

CH_4E_T = Annual mass CH_4 emitted from all anaerobic processes at the facility (metric tons).

n = Index for processes at the facility.

CH_4E_n = Annual mass of CH_4 emissions from process n (metric tons).

j = Total number of processes from which methane is emitted.

§ 98.354 Monitoring and QA/QC requirements.

(a) For calendar year 2011 monitoring, the facility may submit a request to the Administrator to use one or more best available monitoring methods as listed in § 98.3(d)(1)(i) through (iv). The request must be submitted no later than October 12, 2010 and must contain the information in § 98.3(d)(2)(ii). To obtain approval, the request must demonstrate to the Administrator's satisfaction that it is not reasonably feasible to acquire, install, and operate a required piece of monitoring equipment by January 1, 2011. The use of best available monitoring methods will not be approved beyond December 31, 2011.

(b) You must determine the concentration of organic material in wastewater treated anaerobically using analytical methods for COD or BOD_5 specified in 40 CFR 136.3 Table 1B. For the purpose of determining concentrations of wastewater influent to the anaerobic wastewater treatment process, samples may be diluted to the concentration range of the approved method, but the calculated concentration of the undiluted wastewater must be used for calculations and reporting required by this subpart.

(c) You must collect samples representing wastewater influent to the anaerobic wastewater treatment process, following all preliminary and primary treatment steps (*e.g.,* after grit removal, primary clarification, oil-water separation, dissolved air flotation, or similar solids and oil separation processes). You must collect and analyze samples for COD or BOD_5 concentration once each calendar week that the anaerobic wastewater treatment process is operating, with at least three days between measurements. You must collect a sample that represents the average COD or BOD_5 concentration of the waste stream over a 24-hour sampling period. You must collect a minimum of four sample aliquots per 24-hour period and composite the aliquots for analysis. Collect a flow-proportional composite sample (either constant time interval between samples with sample volume proportional to stream flow, or constant sample volume with time interval between samples proportional to stream flow). Follow sampling procedures and techniques presented in Chapter 5, Sampling, of the "NPDES Compliance Inspection Manual," (incorporated by reference, *see* § 98.7) or Section 7.1.3, Sample Collection Methods, of the "U.S. EPA NPDES Permit Writers' Manual," (incorporated by reference, *see* § 98.7).

(d) You must measure the flowrate of wastewater entering anaerobic wastewater treatment process once each calendar week that the process is operating, with at least three days between measurements. You must measure the flowrate for the 24-hour period for which you collect samples analyzed for COD or BOD_5 concentration. The flow measurement location must correspond to the location used to collect samples analyzed for COD or BOD_5 concentration. You must measure the flowrate using one of the methods specified in paragraphs (d)(1) through (d)(5) of this section or as specified by the manufacturer.

(1) ASME MFC–3M–2004 Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi (incorporated by reference, *see* § 98.7).

(2) ASME MFC–5M–1985 (Reaffirmed 1994) Measurement of Liquid Flow in Closed Conduits Using Transit-Time Ultrasonic Flowmeters (incorporated by reference, *see* § 98.7).

(3) ASME MFC–16–2007 Measurement of Liquid Flow in Closed Conduits with Electromagnetic Flowmeters (incorporated by reference, *see* § 98.7).

(4) ASTM D1941–91 (Reapproved 2007) Standard Test Method for Open Channel Flow Measurement of Water with the Parshall Flume, approved June 15, 2007, (incorporated by reference, *see* § 98.7).

(5) ASTM D5614–94 (Reapproved 2008) Standard Test Method for Open Channel Flow Measurement of Water with Broad-Crested Weirs, approved October 1, 2008, (incorporated by reference, *see* § 98.7).

(e) All wastewater flow measurement devices must be calibrated prior to the first year of reporting and recalibrated either biennially (every 2 years) or at the minimum frequency specified by the manufacturer. Wastewater flow measurement devices must be calibrated using the procedures specified by the device manufacturer.

(f) For each anaerobic process (such as anaerobic reactor, digester, or lagoon) from which biogas is recovered, you must continuously measure the gas flow rate as specified in paragraph (h) of this section and determine the cumulative volume of gas recovered as specified in Equation II–4 of this subpart. You must also determine the CH_4 concentration of the recovered biogas as specified in paragraph (g) of this section at a location near or representative of the location of the gas flow meter. You must determine CH_4 concentration either continuously or intermittently. If you determine the concentration intermittently, you must determine the concentration at least once each calendar week that the cumulative biogas flow measured as specified in paragraph (h) of this section is greater than zero, with at least three days between measurements. As specified in § 98.353(c) and paragraph (h) of this section, you must also determine temperature, pressure, and moisture content as necessary to accurately determine the gas flow rate and CH_4 concentration. You must determine temperature and pressure if the gas flow meter or gas composition monitor do not automatically correct for temperature or pressure. You must measure moisture content of the recovered biogas if the gas flow rate is measured on a wet basis and the CH_4 concentration is measured on a dry basis. You must also measure the moisture content of the recovered biogas if the gas flow rate is measured on a dry basis and the CH_4 concentration is measured on a wet basis.

(g) For each anaerobic process (such as an anaerobic reactor, digester, or lagoon) from which biogas is recovered, operate, maintain, and calibrate a gas composition monitor capable of measuring the concentration of CH_4 in the recovered biogas using one of the methods specified in paragraphs (g)(1) through (g)(6) of this section or as specified by the manufacturer.

(1) Method 18 at 40 CFR part 60, appendix A–6.

(2) ASTM D1945–03, Standard Test Method for Analysis of Natural Gas by Gas Chromatography (incorporated by reference, *see* § 98.7).

(3) ASTM D1946–90 (Reapproved 2006), Standard Practice for Analysis of Reformed Gas by Gas Chromatography (incorporated by reference, *see* § 98.7).

(4) GPA Standard 2261–00, Analysis for Natural Gas and Similar Gaseous Mixtures by Gas Chromatography (incorporated by reference, *see* § 98.7).

(5) ASTM UOP539–97 Refinery Gas Analysis by Gas Chromatography (incorporated by reference, *see* § 98.7).

(6) As an alternative to the gas chromatography methods provided in paragraphs (g)(1) through (g)(5) of this section, you may use total gaseous organic concentration analyzers and calculate the CH_4 concentration following the requirements in paragraphs (g)(6)(i) through (g)(6)(iii) of this section.

(i) Use Method 25A or 25B at 40 CFR part 60, appendix A–7 to determine total gaseous organic concentration. You must calibrate the instrument with CH_4 and determine the total gaseous organic concentration as carbon (or as CH_4; K=1

in Equation 25A–1 of Method 25A at 40 CFR part 60, appendix A–7).

(ii) Determine a non-methane organic carbon correction factor at the routine sampling location no less frequently than once a reporting year following the requirements in paragraphs (g)(6)(ii)(A) through (g)(6)(ii)(C) of this section.

(A) Take a minimum of three grab samples of the biogas with a minimum of 20 minutes between samples and determine the methane composition of the biogas using one of the methods specified in paragraphs (g)(1) through (g)(5) of this section.

(B) As soon as practical after each grab sample is collected and prior to the collection of a subsequent grab sample, determine the total gaseous organic concentration of the biogas using either Method 25A or 25B at 40 CFR part 60, appendix A–7 as specified in paragraph (g)(6)(i) of this section.

(C) Determine the arithmetic average methane concentration and the arithmetic average total gaseous organic concentration of the samples analyzed according to paragraphs (g)(6)(ii)(A) and (g)(6)(ii)(B) of this section, respectively, and calculate the non-methane organic carbon correction factor as the ratio of the average methane concentration to the average total gaseous organic concentration. If the ratio exceeds 1, use 1 for the non-methane organic carbon correction factor.

(iii) Calculate the CH_4 concentration as specified in Equation II–8 of this section.

$$C_{CH4} = f_{NMOC} \times C_{TGOC} \qquad \text{(Eq. II-8)}$$

Where:

C_{CH_4} = Methane (CH_4) concentration in the biogas (volume %) for use in Equation II–4 of this subpart.

f_{NMOC} = Non-methane organic carbon correction factor from the most recent determination of the non-methane organic carbon correction factor as specified in paragraph (g)(6)(ii) of this section (unitless).

C_{TGOC} = Total gaseous organic carbon concentration measured using Method 25A or 25B at 40 CFR part 60, appendix A–7 during routine monitoring of the biogas (volume %).

(h) For each anaerobic process (such as an anaerobic reactor, digester, or lagoon) from which biogas is recovered, install, operate, maintain, and calibrate a gas flow meter capable of continuously measuring the volumetric flow rate of the recovered biogas using one of the methods specified in paragraphs (h)(1) through (h)(8) of this section or as specified by the manufacturer. Recalibrate each gas flow meter either biennially (every 2 years) or at the minimum frequency specified by the manufacturer. Except as provided in § 98.353(c)(2)(iii), each gas flow meter must be capable of correcting for the temperature and pressure and, if necessary, moisture content.

(1) ASME MFC–3M–2004, Measurement of Fluid Flow in Pipes Using Orifice, Nozzle, and Venturi (incorporated by reference, *see* § 98.7).

(2) ASME MFC–4M–1986 (Reaffirmed 1997), Measurement of Gas Flow by Turbine Meters (incorporated by reference, *see* § 98.7).

(3) ASME MFC–6M–1998, Measurement of Fluid Flow in Pipes Using Vortex Flowmeters (incorporated by reference, *see* § 98.7).

(4) ASME MFC–7M–1987 (Reaffirmed 1992), Measurement of Gas Flow by Means of Critical Flow Venturi Nozzles (incorporated by reference, *see* § 98.7).

(5) ASME MFC–11M–2006 Measurement of Fluid Flow by Means of Coriolis Mass Flowmeters (incorporated by reference, *see* § 98.7). The mass flow must be corrected to volumetric flow based on the measured temperature, pressure, and gas composition.

(6) ASME MFC–14M–2003 Measurement of Fluid Flow Using Small Bore Precision Orifice Meters (incorporated by reference, *see* § 98.7).

(7) ASME MFC–18M–2001 Measurement of Fluid Flow using Variable Area Meters (incorporated by reference, *see* § 98.7).

(8) Method 2A or 2D at 40 CFR part 60, appendix A–1.

(i) All temperature, pressure, and, moisture content monitors required as specified in paragraph (f) of this section must be calibrated using the procedures and frequencies where specified by the device manufacturer, if not specified use an industry accepted or industry standard practice.

(j) All equipment (temperature, pressure, and moisture content monitors and gas flow meters and gas composition monitors) must be maintained as specified by the manufacturer.

(k) If applicable, the owner or operator must document the procedures used to ensure the accuracy of measurements of COD or BOD_5 concentration, wastewater flow rate, gas flow rate, gas composition, temperature, pressure, and moisture content. These procedures include, but are not limited to, calibration of gas flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices must also be recorded, and the technical basis for these estimates must be documented.

§ 98.355 Procedures for estimating missing data.

A complete record of all measured parameters used in the GHG emissions calculations is required. Therefore, whenever a quality-assured value of a required parameter is unavailable (*e.g.,* if a meter malfunctions during unit operation or if a required sample is not taken), a substitute data value for the missing parameter must be used in the calculations, according to the following requirements in paragraphs (a) through (c) of this section:

(a) For each missing weekly value of COD or BOD_5 or wastewater flow entering an anaerobic wastewater treatment process, the substitute data value must be the arithmetic average of the quality-assured values of those parameters for the week immediately preceding and the week immediately following the missing data incident.

(b) For each missing value of the CH_4 content or gas flow rates, the substitute data value must be the arithmetic average of the quality-assured values of that parameter immediately preceding and immediately following the missing data incident.

(c) If, for a particular parameter, no quality-assured data are available prior to the missing data incident, the substitute data value must be the first quality-assured value obtained after the missing data period. If, for a particular parameter, the "after" value is not obtained by the end of the reporting year, you may use the last quality-assured value obtained "before" the missing data period for the missing data substitution. You must document and keep records of the procedures you use for all such estimates.

§ 98.356 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must contain the following information for each wastewater treatment system.

(a) A description or diagram of the industrial wastewater treatment system, identifying the processes used to treat industrial wastewater and industrial wastewater treatment sludge. Explain how the processes are related to each other and identify the anaerobic processes. Provide a unique identifier for each anaerobic process, indicate the average depth in meters of all anaerobic lagoons, and indicate whether biogas generated by each anaerobic process is recovered. The anaerobic processes must be identified as:

(1) Anaerobic reactor.

(2) Anaerobic deep lagoon (depth more than 2 meters).

(3) Anaerobic shallow lagoon (depth less than 2 meters).

(4) Anaerobic sludge digester.

(b) For each anaerobic wastewater treatment process (reactor, deep lagoon, or shallow lagoon) you must report:

(1) Weekly average COD or BOD_5 concentration of wastewater entering each anaerobic wastewater treatment process, for each week the anaerobic process was operated.

(2) Volume of wastewater entering each anaerobic wastewater treatment process for each week the anaerobic process was operated.

(3) Maximum CH_4 production potential (B_0) used as an input to Equation II–1 or II–2 of this subpart.

(4) Methane conversion factor (MCF) used as an input to Equation II–1 or II–2 of this subpart.

(5) Annual mass of CH_4 generated by each anaerobic wastewater treatment process, calculated using Equation II–1 or II–2 of this subpart.

(c) For each anaerobic wastewater treatment process from which biogas is not recovered, you must report the annual CH_4 emissions, calculated using Equation II–3 of this subpart.

(d) For each anaerobic wastewater treatment process and anaerobic digester from which some biogas is recovered, you must report:

(1) Annual quantity of CH_4 recovered from the anaerobic process calculated using Equation II–4 of this subpart.

(2) Cumulative volumetric biogas flow for each week that biogas is collected for destruction.

(3) Weekly average CH_4 concentration for each week that biogas is collected for destruction.

(4) Weekly average temperature for each week at which flow is measured for biogas collected for destruction, or statement that temperature is incorporated into monitoring equipment internal calculations.

(5) Whether flow was measured on a wet or dry basis, whether CH_4 concentration was measured on a wet or dry basis, and if required for Equation II–4 of this subpart, weekly average moisture content for each week at which flow is measured for biogas collected for destruction, or statement that moisture content is incorporated into monitoring equipment internal calculations.

(6) Weekly average pressure for each week at which flow is measured for biogas collected for destruction, or statement that pressure is incorporated into monitoring equipment internal calculations.

(7) CH_4 collection efficiency (CE) used in Equation II–5 of this subpart.

(8) Whether destruction occurs at the facility or off-site. If destruction occurs at the facility, also report whether a back-up destruction device is present at the facility, the annual operating hours for the primary destruction device, the annual operating hours for the back-up destruction device (if present), the destruction efficiency for the primary destruction device, and the destruction efficiency for the backup destruction device (if present).

(9) For each anaerobic process from which some biogas is recovered, you must report the annual CH_4 emissions, as calculated by Equation II–6 of this subpart.

(e) The total mass of CH_4 emitted from all anaerobic processes from which biogas is not recovered (calculated in Equation II–3 of this supbart) and from all anaerobic processes from which some biogas is recovered (calculated in Equation II–6 of this subpart) using Equation II–7 of this subpart.

§ 98.357 Records that must be retained.

In addition to the information required by § 98.3(g), you must retain the calibration records for all monitoring equipment, including the method or manufacturer's specification used for calibration.

§ 98.358 Definitions.

Except as provided below, all terms used in this subpart have the same meaning given in the CAA and subpart A of this part.

Biogas means the combination of CO_2, CH_4, and other gases produced by the biological breakdown of organic matter in the absence of oxygen.

Ethanol production means an operation that produces ethanol from the fermentation of sugar, starch, grain, or cellulosic biomass feedstocks, or the production of ethanol synthetically from petrochemical feedstocks, such as ethylene or other chemicals.

Food processing means an operation used to manufacture or process meat, poultry, fruits, and/or vegetables as defined under NAICS 3116 (Meat Product Manufacturing) or NAICS 3114 (Fruit and Vegetable Preserving and Specialty Food Manufacturing). For information on NAICS codes, *see http://www.census.gov/eos/www/naics/.*

Industrial wastewater means water containing wastes from an industrial process. Industrial wastewater includes water which comes into direct contact with or results from the storage, production, or use of any raw material, intermediate product, finished product, by-product, or waste product. Examples of industrial wastewater include, but are not limited to, paper mill white water, wastewater from equipment cleaning, wastewater from air pollution control devices, rinse water, contaminated stormwater, and contaminated cooling water.

Industrial wastewater treatment sludge means solid or semi-solid material resulting from the treatment of industrial wastewater, including but not limited to biosolids, screenings, grit, scum, and settled solids.

Wastewater treatment system means the collection of all processes that treat or remove pollutants and contaminants, such as soluble organic matter, suspended solids, pathogenic organisms, and chemicals from wastewater prior to its reuse or discharge from the facility.

TABLE II–1 TO SUBPART II—EMISSION FACTORS

Factors	Default value	Units
B_0—for facilities monitoring COD	0.25	Kg CH_4/kg COD
B_0—for facilities monitoring BOD_5	0.60	Kg CH_4/kg BOD_5
MCF—anaerobic reactor	0.8	Fraction.
MCF—anaerobic deep lagoon (depth more than 2 m)	0.8	Fraction.
MCF—anaerobic shallow lagoon (depth less than 2 m)	0.2	Fraction.

TABLE II–2 TO SUBPART II—COLLECTION EFFICIENCIES OF ANAEROBIC PROCESSES

Anaerobic process type	Cover type	Methane collection efficiency
Covered anaerobic lagoon (biogas capture)	Bank to bank, impermeable	0.975
	Modular, impermeable	0.70
Anaerobic sludge digester; anaerobic reactor	Enclosed Vessel	0.99

■ 11. Add and reserve subparts QQ, RR, and SS.

■ 12. Add subpart TT to read as follows:

Subpart TT—Industrial Waste Landfills

Sec.

Subpart TT—Industrial Waste Landfills

§ 98.460 Definition of the source category.

(a) This source category applies to industrial waste landfills that accepted waste on or after January 1, 1980, and that are located at a facility whose total landfill design capacity is greater than or equal to 300,000 metric tons.

(b) *An industrial waste landfill* is a landfill other than a municipal solid waste landfill, a RCRA Subtitle C hazardous waste landfill, or a TSCA hazardous waste landfill, in which industrial solid waste, such as RCRA Subtitle D wastes (non-hazardous industrial solid waste, defined in 40 CFR 257.2), commercial solid wastes, or conditionally exempt small quantity generator wastes, is placed. An industrial waste landfill includes all disposal areas at the facility.

(c) This source category does not include:

(1) Dedicated construction and demolition waste landfills. *A dedicated construction and demolition waste landfill* receives materials generated from the construction or destruction of structures such as buildings, roads, and bridges.

(2) Industrial waste landfills that only receive one or more of the following inert waste materials:

(i) Coal combustion residue (*e.g.,* fly ash).

(ii) Cement kiln dust.

(iii) Rocks and/or soil from excavation and construction and similar activities.

(iv) Glass.

(v) Non-chemically bound sand (*e.g.,* green foundry sand).

(vii) Clay, gypsum, or pottery cull.

(viii) Bricks, mortar, or cement.

(ix) Furnace slag.

(x) Materials used as refractory (*e.g.,* alumina, silicon, fire clay, fire brick).

(xi) Plastics (*e.g.,* polyethylene, polypropylene, polyethylene terephthalate, polystyrene, polyvinyl chloride).

(xii) Other waste material that has a volatile solids concentration of 0.5 weight percent (on a dry basis) or less.

(d) This source category consists of the following sources at industrial waste landfills: Landfills, gas collection systems at landfills, and destruction devices for landfill gases (including flares).

§ 98.461 Reporting threshold.

You must report GHG emissions under this subpart if your facility contains an industrial waste landfill meeting the criteria in § 98.460 and the facility meets the requirements of § 98.2(a)(2). For the purposes of § 98.2(a)(2), the emissions from the industrial waste landfill are to be determined using the methane generation corrected for oxidation as determined using Equation TT–6 of this subpart times the global warming potential for methane in Table A–1 of subpart A of this part.

§ 98.462 GHGs to report.

(a) You must report CH_4 generation and CH_4 emissions from industrial waste landfills.

(b) You must report CH_4 destruction resulting from landfill gas collection and destruction devices, if present.

(c) You must report under subpart C of this part (General Stationary Fuel Combustion Sources) the emissions of CO_2, CH_4, and N_2O from each stationary combustion unit associated with the landfill gas destruction device, if present, by following the requirements of subpart C of this part.

§ 98.463 Calculating GHG emissions.

(a) For each industrial waste landfill subject to the reporting requirements of this subpart, calculate annual modeled CH_4 generation according to the applicable requirements in paragraphs (a)(1) through (a)(3) of this section. Apply Equation TT–1 of this section for each waste stream disposed of in the landfill and sum the CH_4 generation rates for all waste streams disposed of in the landfill to calculate the total annual modeled CH_4 generation rate for the landfill.

(1) Calculate annual modeled CH_4 generation using Equation TT–1 of this section.

$$G_{CH4} = \left[\sum_{x=S}^{T-1} \left\{ W_x \times DOC_x \times MCF \times DOC_F \times F_x \times \frac{16}{12} \times \left(e^{-k(T-x-1)} - e^{-k(T-x)} \right) \right\} \right] \qquad \text{(Eq. TT-1)}$$

Where:

G_{CH4} = Modeled methane generation rate in reporting year T (metric tons CH_4).

X = Year in which waste was disposed.

S = Start year of calculation. Use the year 1960 or the opening year of the landfill, whichever is more recent.

T = Reporting year for which emissions are calculated.

W_x = Quantity of waste disposed in the industrial waste landfill in year X from measurement data and/or other company records (metric tons, as received (wet weight)).

DOC_x = Degradable organic carbon for year X from Table TT–1 of this subpart or from measurement data [as specified in paragraph (a)(3) of this section], if available [fraction (metric tons C/metric ton waste)].

DOC_F = Fraction of DOC dissimilated (fraction); use the default value of 0.5.

MCF = Methane correction factor (fraction); use the default value of 1.

F_x = Fraction by volume of CH_4 in landfill gas (fraction, dry basis). If you have a gas collection system, use the annual average

CH_4 concentration from measurement data for the given year; otherwise, use the default value of 0.5.

k = Decay rate constant from Table TT–1 of this subpart (yr^{-1}). Select the most applicable k value for the majority of the past 10 years (or operating life, whichever is shorter).

(2) *Waste stream quantities.* Determine annual waste quantities as specified in paragraphs (a)(2)(i) through (ii) of this section for each year starting with January 1, 1980 or the year the landfills first accepted waste if after January 1, 1980, up until the most recent reporting year. The choice of method for determining waste quantities will vary according to the availability of historical data. Beginning in the first emissions monitoring year (2011 or later) and for each year thereafter, use the procedures in paragraph (a)(2)(i) of this section to determine waste stream quantities. These procedures should also be used for any year prior to the first emissions monitoring year for which the data are available. For other historical years, use paragraph (a)(2)(i) of this section, where waste disposal records are available, and use the procedures outlined in paragraph (a)(2)(ii) of this section when waste disposal records are unavailable, to determine waste stream quantities. Historical disposal quantities deposited (*i.e,* prior to the first year in which monitoring begins) should only be determined once, as part of the first annual report, and the same values should be used for all subsequent annual reports, supplemented by the next year's data on new waste disposal.

(i) Determine the quantity of waste (in metric tons as received, *i.e.,* wet weight) disposed of in the landfill separately for each waste stream by any one or a combination of the following methods.

(A) Direct mass measurements.

(B) Direct volume measurements multiplied by waste stream density determined from periodic density measurement data or process knowledge.

(C) Mass balance procedures, determining the mass of waste as the difference between the mass of the process inputs and the mass of the process outputs.

(D) The number of loads (*e.g.,* trucks) multiplied by the mass of waste per load based on the working capacity of the container or vehicle.

(ii) Determine the historical disposal quantities for landfills using the Waste Disposal Factor approach in paragraphs (a)(2)(ii)(A) and (B) of this section when historical production or processing data are available. If production or processing data are available for a given year, you must use Equation TT–3 of this section for that year. Determine historical disposal quantities using the method specified in paragraph (a)(2)(ii)(C) of this section when historical production or processing data are not available, and for waste streams received from an off-site facility when historical disposal quantities cannot be determined using the methods specified in paragraph (a)(2)(i) of this section.

(A) *Determining Waste Disposal Factor:* For each waste stream disposed of in the landfill, calculate the average waste disposal rate per unit of production or unit throughput using all available waste quantity data and corresponding production or processing rates for the process generating that waste or, if appropriate, the facility, using Equation TT–2 of this section.

$$WDF = \left[\sum_{x=Y_1}^{Y_2} \left\{ \frac{W_x}{N \times P_x} \right\} \right] \qquad \text{(Eq. TT-2)}$$

Where:

WDF = Average waste disposal factor as determined for the first annual report required for this industrial waste landfill (metric tons per production unit).

X = Year in which waste was disposed. Include only those years for which disposal and production data are both available; the years do not need to be sequential.

Y_1 = First year in which disposal and production/throughput data are both available.

Y_2 = First year for which GHG emissions from this industrial waste landfill must be reported.

N = Number of years for which disposal and production/throughput data are both available.

W_x = Quantity of waste placed in the industrial waste landfill in year X from measurement data and/or other company records (metric tons, as received (wet weight)).

P_x = Quantity of product produced or feedstock entering the process or facility in year X from measurement data and/or other company records (production units). You must use the same basis for all years in the calculation. That is, P_x must be determined based on production (quantity of product produced) for all "N" years or P_x must be determined based on throughput (quantity of feedstock) for all "N" years.

(B) *Calculate waste:* For each waste stream disposed of in the landfill, calculate the waste disposal quantities for historic years in which direct waste disposal measurements are not available using historical production data and Equation TT–3 of this section.

$$W_x = WDF \times P_x \qquad \text{(Eq. TT-3)}$$

Where:

X = Historic year in which waste was disposed.

W_x = Calculated quantity of waste placed in the landfill in year X (metric tons).

WDF = Average waste disposal factor from Equation TT–2 of this section (metric tons per production unit).

P_x = Quantity of product produced or feedstock entering the process or facility in year X from measurement data and/or other company records (production units). You must use the same basis for P_x (either production only or throughput only) as used to determine WDF in Equation TT–2 of this section.

(C) For any year in which historic production or processing data are not available such that historic waste quantities cannot be estimated using Equation TT–3 of this section, calculate an average annual bulk waste disposal quantity using fixed average annual bulk waste disposal quantity for each year for which historic disposal quantity and Equation TT–4 of this section.

$$W_x = \frac{LFC}{(YrData - YrOpen + 1)} \qquad \text{(Eq. TT-4)}$$

Where:

W_x = Quantity of waste placed in the landfill in year X (metric tons, wet basis).

LFC = Landfill capacity or, for operating landfills, capacity of the landfill used (or the total quantity of waste-in-place) at the end of the "YrData" from design drawings or engineering estimates (metric tons).

YrData = Year in which the landfill last received waste or, for operating landfills, the year prior to the year when waste disposal data is first available from company records or from Equation TT–3 of this section.

YrOpen = Year 1960 or the year in which the landfill first received waste from company records, whichever is more recent. If no data are available for estimating YrOpen for a closed landfill, use 1960 as the default "YrOpen" for the landfill.

(3) *Degradable organic content (DOC).* For any year, X, in Equation TT–1 of this section, use either the applicable default DOC values provided in Table TT–1 of this subpart or determine values for DOC_x as specified in paragraphs (a)(3)(i) through (iv) of this section. When developing historical waste quantity data, you may use default DOC values from Table TT–1 of this subpart for certain years and determined values for DOC_x for other years. The historical values for DOC or DOC_x must be developed only for the first annual report required for the industrial waste landfill; and used for all subsequent annual reports (*e.g.,* if DOC for year x=1990 was determined to be 0.15 in the first reporting year, you must use 0.15 for the 1990 DOC value for all subsequent annual reports).

(i) For the first year in which GHG emissions from this industrial waste landfill must be reported, determine the DOC_x value of each waste stream disposed of in the landfill no less frequently than once per quarter using the methods specified in § 98.464(b). Calculate annual DOC_x for each waste stream as the arithmetic average of all DOC_x values for that waste stream that were measured during the year.

(ii) For subsequent years (after the first year in which GHG emissions from this industrial waste landfill must be reported), either use the DOC_x of each waste stream calculated for the most recent reporting year for which DOC values were determined according to paragraph (a)(3)(i) of this section, or determine new DOC values for that year following the requirements in paragraph (a)(3)(i) of this section. You must determine new DOC values following the requirements in paragraph (a)(3)(i) of this section if changes in the process operations occurred during the previous reporting year that can reasonably be expected to alter the characteristics of the waste stream, such as the water content or volatile solids concentration. Should changes to the waste stream occur, you must revise the GHG Monitoring Plan as required in § 98.3(g)(5)(iii) and report the new DOC_x value according to the requirements of § 98.466.

(iii) If DOC_x measurement data for each waste stream are available according to the methods specified in § 98.464(b) for years prior to the first year in which GHG emissions from this industrial waste landfill must be reported, determine DOC_x for each waste stream as the arithmetic average of all DOC_x values for that waste stream that were measured in Year X. A single measurement value is acceptable for determining DOC_x for years prior to the first reporting year.

(iv) For historical years for which DOC_x measurement data, determined according to the methods specified in § 98.464(b), are not available, determine the historical values for DOC_x using the applicable methods specified in paragraphs (a)(3)(iv)(A) and (B) of this section. Determine these historical values for DOC_x only for the first annual report required for this industrial waste landfill; historical values for DOC_x calculated for this first annual report should be used for all subsequent annual reports.

(A) For years in which waste stream-specific disposal quantities are determined (as required in paragraphs (a)(2) (ii)(A) and (B) of this section), calculate the average DOC value for a given waste stream as the arithmetic average of all DOC measurements of that waste stream that follow the methods provided in § 98.464(b), including any measurement values for years prior to the first reporting year and the four measurement values required in the first reporting year. Use the resulting waste-specific average DOC value for all applicable years (*i.e.,* years in which waste stream-specific disposal quantities are determined) for which direct DOC measurement data are not available.

(B) For years for which bulk waste disposal quantities are determined according to paragraphs (a)(2)(ii)(C) of this section, calculate the weighted average bulk DOC value according to the following: Calculate the average DOC value for each waste stream as the arithmetic average of all DOC measurements of that waste stream that follows the methods provided in § 98.464(b) (generally, this will include only the DOC values determined in the first year in which GHG emissions from this industrial waste landfill must be reported); calculate the average annual disposal quantity for each waste stream as the arithmetic average of the annual disposal quantities for each year in which waste stream-specific disposal quantities have been determined; and calculate the bulk waste DOC value using Equation TT–5 of this section. Use the bulk waste DOC value as DOC_x for all years for which bulk waste disposal quantities are determined according to paragraphs (a)(2)(ii)(C) of this section.

$$DOC_{bulk} = \frac{\sum_{n=1}^{N}\left(DOC_{ave,n} \times W_{ave,n}\right)}{\sum_{n=1}^{N} W_{ave,n}} \qquad \text{(Eq. TT-5)}$$

Where:

DOC_{bulk} = Degradable organic content value for bulk historical waste placed in the landfill (mass fraction).

N = Number of different waste streams placed in the landfill.

n = Index for waste stream.

$DOC_{ave,n}$ = Average degradable organic content value for waste stream "n" based on available measurement data (mass fraction).

$W_{ave,n}$ = Average annual quantity of waste stream "n" placed in the landfill for years in which waste stream-specific disposal quantities have been determined (metric tons per year, wet basis).

(b) For each landfill, calculate CH_4 generation (adjusted for oxidation in cover materials) and CH_4 emissions (taking into account any CH_4 recovery, if applicable, and oxidation in cover materials) according to the applicable methods in paragraphs (b)(1) through (b)(3) of this section.

(1) For each landfill, calculate CH_4 generation, adjusted for oxidation, from the modeled CH_4 (G_{CH_4} from Equation TT–1 of this section) using Equation TT–6 of this section.

$$MG = G_{CH4} \times (1 - OX) \qquad \text{(Eq. TT-6)}$$

Where:

MG = Methane generation, adjusted for oxidation, from the landfill in the reporting year (metric tons CH_4).

G_{CH_4} = Modeled methane generation rate in reporting year from Equation TT–1 of this section (metric tons CH_4).

OX = Oxidation fraction. Use the default value of 0.1 (10 percent).

(2) For landfills that do not have landfill gas collection systems operating during the reporting year, the CH_4 emissions are equal to the CH_4 generation (MG) calculated in Equation TT–6 of this section.

(3) For landfills with landfill gas collection systems in operation during any portion of the reporting year, perform all of the calculations specified in paragraphs (b)(3)(i) through (iv) of this section.

(i) Calculate the quantity of CH_4 recovered according to the requirements at § 98.343(b).

(ii) Calculate CH_4 emissions using the Equation HH–6 of § 98.343(c)(3)(i), except use G_{CH_4} determined using Equation TT–1 of this section in Equation HH–6 of § 98.343(c)(3)(i).

(iii) Calculate CH_4 generation (MG) from the quantity of CH_4 recovered using Equation HH–7 of § 98.343(c)(3)(ii).

(iv) Calculate CH_4 emissions from the quantity of CH_4 recovered using Equation HH–8 of § 98.343(c)(3)(ii).

§ 98.464 Monitoring and QA/QC requirements.

(a) For calendar year 2011 monitoring, the facility may submit a request to the Administrator to use one or more best available monitoring methods as listed in § 98.3(d)(1)(i) through (iv). The request must be submitted no later than October 12, 2010 and must contain the information in § 98.3(d)(2)(ii). To obtain approval, the request must demonstrate to the Administrator's satisfaction that it is not reasonably feasible to acquire, install, and operate a required piece of monitoring equipment by January 1, 2011. The use of best available monitoring methods will not be approved beyond December 31, 2011.

(b) For each waste stream for which you choose to determine volatile solids concentration for the purposes of paragraph § 98.460(c)(2)(xii) or choose to determine a landfill-specific DOC_x for use in Equation TT–1 of this subpart, you must collect and test a representative sample of that waste stream using the methods specified in paragraphs (b)(1) through (b)(4) of this section.

(1) Develop and follow a sampling plan to collect a representative sample of each waste stream for which testing is elected.

(2) Determine the percent total solids and the percent volatile solids of each sample following Standard Method 2540G "Total, Fixed, and Volatile Solids in Solid and Semisolid Samples" (incorporated by reference; *see* § 98.7).

(3) Calculate the volatile solids concentration (weight percent on a dry basis) using Equation TT–7 of this section.

$$C_{VS} = \frac{\%\ \text{Volatile Solids}}{\%\ \text{Total Solids}} \times 100\% \qquad \text{(Eq. TT-7)}$$

Where:

C_{VS} = Volatile solids concentration in the waste stream (weight percent, dry basis).

% Volatile Solids = Percent volatile solids determined using Standard Method 2540G "Total, Fixed, and Volatile Solids in Solid and Semisolid Samples" (incorporated by reference; *see* § 98.7).

% Total Solids = Percent total solids determined using Standard Method 2540G "Total, Fixed, and Volatile Solids in Solid and Semisolid Samples" (incorporated by reference; *see* § 98.7).

(4) Calculate the waste stream-specific DOC_x value using Equation TT–8 of this section.

$$DOC_x = F_{DOC} \times \%\ \text{Volatile Solids}_x \qquad \text{(Eq. TT-8)}$$

Where:

DOC_x = Degradable organic content of waste stream in Year X (weight fraction, wet basis)

F_{DOC} = Fraction of the volatile residue that is degradable organic carbon (weight fraction). Use a default value of 0.6.

% Volatile $Solids_x$ = Percent volatile solids determined using Standard Method 2540G Total, "Fixed, and Volatile Solids in Solid and Semisolid Samples" (incorporated by reference; *see* § 98.7) for Year X.

(c) For landfills with gas collection systems, operate, maintain, and calibrate a gas composition monitor capable of measuring the concentration of CH_4 according to the requirements specified at § 98.344(b).

(d) For landfills with gas collection systems, install, operate, maintain, and calibrate a gas flow meter capable of measuring the volumetric flow rate of the recovered landfill gas according to the requirements specified at § 98.344(c).

(e) For landfills with gas collection systems, all temperature, pressure, and if applicable, moisture content monitors must be calibrated using the procedures and frequencies specified by the manufacturer.

(f) The facility shall document the procedures used to ensure the accuracy of the estimates of disposal quantities and, if the industrial waste landfill has a gas collection system, gas flow rate, gas composition, temperature, pressure, and moisture content measurements. These procedures include, but are not limited to, calibration of weighing equipment, fuel flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices shall also be recorded, and the technical basis for these estimates shall be provided.

§ 98.465 Procedures for estimating missing data.

(a) A complete record of all measured parameters used in the GHG emissions calculations is required. Therefore, whenever a quality-assured value of a required parameter is unavailable (*e.g.,* if a meter malfunctions during unit operation or if a required fuel sample is not taken), a substitute data value for the missing parameter shall be used in the calculations, in accordance with paragraph (b) of this section.

(b) For industrial waste landfills with gas collection systems, follow the procedures for estimating missing data specified in § 98.345(a) and (b).

§ 98.466 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must contain the following information for each landfill.

(a) Report the following general landfill information:

(1) A classification of the landfill as "open" (actively received waste in the reporting year) or "closed" (no longer receiving waste).

(2) The year in which the landfill first started accepting waste for disposal.

(3) The last year the landfill accepted waste (for open landfills, enter the estimated year of landfill closure).

(4) The capacity (in metric tons) of the landfill.

(5) An indication of whether leachate recirculation is used during the reporting year and its typical frequency of use over the past 10 years (*e.g.,* used several times a year for the past 10

years, used at least once a year for the past 10 years, used occasionally but not every year over the past 10 years, not used).

(b) Report the following waste characterization information:

(1) The number of waste steams (including "Other Industrial Solid Waste (not otherwise listed)") for which Equation TT–1 of this subpart is used to calculate modeled CH_4 generation.

(2) A description of each waste stream (including the types of materials in each waste stream).

(c) For each waste stream identified in paragraph (b) of this section, report the following information:

(1) The decay rate (k) value used in the calculations.

(2) The method(s) for estimating historical waste disposal quantities and the range of years for which each method applies.

(3) If Equation TT–2 of this subpart is used, provide:

(i) The total number of years (N) for which disposal and production data are both available.

(ii) The year, the waste disposal quantity and production quantity for each year Equation TT–2 of this subpart applies.

(iii) The average waste disposal factor (WDF) calculated for the waste stream.

(4) If Equation TT–4 of this subpart is used, provide:

(i) The value of landfill capacity (LFC).

(ii) YrData.

(iii) YrOpen.

(d) For each year of landfilling starting with the "Start Year" (S) to the current reporting year, report the following information:

(1) The quantity of waste (W_x) disposed of in the landfill (metric tons, wet weight) for each waste stream identified in paragraph (b) of this section.

(2) The degradable organic carbon (DOC_x) value (mass fraction) and an indication as to whether this was the default value from Table TT–1 of this subpart or a value determined through sampling and calculation for each waste stream identified in paragraph (b) of this section.

(3) The fraction of CH_4 in the landfill gas (volume fraction, dry basis) and an indication as to whether this was the default value or a value determined through measurement data.

(e) Report the following information describing the landfill cover material:

(1) The type of cover material used (as either organic cover, clay cover, sand cover, or other soil mixtures).

(2) For each type of cover material used, the surface area (in square meters) at the start of the reporting year for the landfill sections that contain waste and that are associated with the selected cover type.

(f) The modeled annual methane generation rate for the reporting year (metric tons CH_4) calculated using Equation TT–1 of this subpart.

(g) For landfills without gas collection systems, provide:

(1) The annual methane emissions (*i.e.,* the methane generation, adjusted for oxidation, calculated using Equation TT–5 of this subpart), reported in metric tons CH_4.

(2) An indication of whether passive vents and/or passive flares (vents or flares that are not considered part of the gas collection system as defined in § 98.6) are present at this landfill.

(h) For landfills with gas collection systems, in addition to the reporting requirements in paragraphs (a) through (f) of this section, you must report according to § 98.346(i).

§ 98.467 Records that must be retained.

In addition to the information required by § 98.3(g), you must retain the calibration records for all monitoring equipment, including the method or manufacturer's specification used for calibration.

§ 98.468 Definitions.

Except as provided below, all terms used in this subpart have the same meaning given in the CAA and subpart A of this part.

Solid waste has the meaning established by the Administrator pursuant to the Solid Waste Disposal Act (42 U.S.C.A. 6901 *et seq.*).

Waste stream means industrial solid waste material that is generated by a specific manufacturing process or client. For wastes generated at the facility that includes the industrial waste landfill, a waste stream is the industrial solid waste material generated by a specific processing unit at that facility. For industrial solid wastes that are received from off-site facilities, a waste stream can be defined as each waste shipment or group of waste shipments received from a single client or group of clients that produce industrial solid wastes with similar waste properties.

TABLE TT–1 TO SUBPART TT—DEFAULT DOC AND DECAY RATE VALUES FOR INDUSTRIAL WASTE LANDFILLS

Industry/Waste Type	DOC (weight fraction, wet basis)	k [dry climate[a]] (yr^{-1})	k [moderate climate[a]] (yr^{-1})	k [wet climate[a]] (yr^{-1})
Food Processing	0.22	0.06	0.12	0.18
Pulp and Paper	0.20	0.02	0.03	0.04
Wood and Wood Product	0.43	0.02	0.03	0.04
Construction and Demolition	0.04	0.02	0.03	0.04
Inert Waste [*i.e.,* wastes listed in § 98.460(b)(3)]	0	0	0	0
Other Industrial Solid Waste (not otherwise listed)	0.20	0.02	0.04	0.06

[a] The applicable climate classification is determined based on the annual rainfall plus the recirculated leachate application rate. Recirculated leachate application rate (in inches/year) is the total volume of leachate recirculated and applied to the landfill divided by the area of the portion of the landfill containing waste [with appropriate unit conversions].

(1) Dry climate = precipitation plus recirculated leachate less than 20 inches/year.

(2) Moderate climate = precipitation plus recirculated leachate from 20 to 40 inches/year (inclusive).

(3) Wet climate = precipitation plus recirculated leachate greater than 40 inches/year.

[FR Doc. 2010–16488 Filed 7–9–10; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Monday,
July 12, 2010

Part III

Department of Education

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Center on Knowledge Translation (KT) for Employment Research (Center); Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Center on Knowledge Translation (KT) for Employment Research (Center)

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–5.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice announces a priority for a DRRP to serve as the Center on Knowledge Translation (KT) for Employment Research (Center). The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective August 11, 2010.

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *Lynn.Medley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

This notice of final priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Purpose of Program:

The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/resprogram.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

We published a notice of proposed priority (NPP) for NIDRR's Disability and Rehabilitation Research Projects and Centers Program in the **Federal Register** on May 17, 2010 (75 FR 27544). The NPP included a background statement that described our rationale for the priority proposed in that notice.

There is one significant difference between the NPP and this notice of final priority (NFP) as discussed in the following section.

Public Comment:

In response to our invitation in the NPP, one party submitted comments on the proposed priority. An analysis of the comments and of the changes in the priority since publication of the NPP follows.

Generally, we do not address technical and other minor changes or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we do not address general comments that raised concerns not directly related to the proposed priority.

Analysis of Comments and Changes:

Comment: One commenter noted that the priority requires the Center to actively engage "vocational rehabilitation (VR) practitioners" in its work. This commenter asked whether the term "VR practitioners" refers only to State VR agencies and their staff, or if the term could also include staff of rehabilitation service providers such as Community Rehabilitation Programs.

Discussion: As used in the priority, the term "VR practitioners" refers specifically to State VR agencies and their staff. However, applicants are free to expand the use of this term to include other rehabilitation professionals, such as staff from Community Rehabilitation Programs.

Changes: None.

Comment: In reference to paragraph (c) of the priority, one commenter noted that it would be beneficial for the Center to coordinate with, and provide training and technical assistance to, NIDRR's Disability and Business Technical Assistance Center (DBTAC) grantees, as well as relevant RSA grantees such as the Technical Assistance and Continuing Education (TACE) Centers.

Discussion: NIDRR agrees that the Center should coordinate with the DBTAC grantees and TACE Centers and that these grantees would benefit from the work of the Center. Therefore, NIDRR is changing the priority accordingly.

Changes: NIDRR has revised paragraphs (c)(1) and (c)(2) of the priority to require the Center to coordinate its activities with RSA-funded grantees, as well as NIDRR-funded grantees. NIDRR has also revised paragraph (c)(1) of the priority to include the DBTACs and the TACE Centers as examples of relevant RSA- and NIDRR-funded grantees that could benefit from the training and technical assistance provided by the Center.

Final Priority:

The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Disability and Rehabilitation Research Project (DRRP) to serve as the Center on Knowledge Translation (KT) for Employment Research (Center). The purpose of the Center is to conduct systematic reviews of research findings to identify evidence-based practices and other information that can be used to improve employment outcomes for individuals with disabilities, to identify research

gaps, and to investigate and promote effective strategies to increase the appropriate use of these findings. The Center must conduct rigorous and relevant research, development, technical assistance, dissemination, and utilization activities.

These activities must contribute to: (1) Improved knowledge of the state of research relevant to improving employment outcomes for individuals with disabilities; (2) improved knowledge of the findings from high-quality research; (3) identification of practices that are promising or proven to have been effective for specific purposes or target audiences; and (4) improved knowledge on the part of consumers and others not only of the research findings but also of the strengths of the findings and the appropriate use of the research information. These outcomes will lead to the increased use of research-based knowledge related to improving employment outcomes for individuals with disabilities by the following user groups: Individuals with disabilities, employers, policy makers, and vocational rehabilitation (VR) practitioners. The Center must work in partnership with organizations representing these user groups. These user groups must be actively engaged in the planning, conduct, and evaluation of all project activities.

Under this priority, the Center must contribute to the following outcomes:

(a) Establishment of available employment-related knowledge that can be used to inform behavior, practices, or policies that improve employment outcomes of individuals with disabilities. The Center must contribute to this outcome by:

(1) Systematically reviewing existing research to identify findings that can be used by individuals with disabilities, employers, policy makers, and VR practitioners to improve the employment of individuals with disabilities. The Center must conduct systematic reviews of individual studies to assess their strengths and weaknesses; summarize findings; assess the appropriate uses of the findings; determine the relevance of the findings; and make the information publicly available. In so doing, the Center must take into account the types of research and stages of knowledge development (*i.e.,* the type of research questions being addressed and the methods employed) in each area.

(2) Producing syntheses on topics, including promising and proven practices, for which the Center determines the research to be of sufficient quality and relevance pursuant to paragraph (a)(1) of this priority. The Center must use standards and methods that are appropriate for the type of research, the stage of knowledge in the identified areas, and its intended use to categorize, evaluate, and synthesize the research findings identified in paragraph (a)(1) of this priority.

(3) Suggesting priorities for a future research agenda based on the knowledge gaps discovered through the review of existing research findings in paragraph (a)(1) of this priority.

(b) Establishment of effective approaches and strategies to promote the appropriate use of research findings on improving the employment of individuals with disabilities, by individuals with disabilities, employers, policy makers, and VR practitioners.

The Center must contribute to this outcome by:

(1) Conducting research on factors impeding and contributing to the use of research findings on employment of individuals with disabilities by individuals with disabilities, employers, policy makers, and VR practitioners.

(2) Identifying, selecting, refining, and testing approaches and strategies that can be used to promote the appropriate use of research findings on employment of individuals with disabilities by individuals with disabilities, employers, policy makers, and VR practitioners. These approaches and strategies must be refined and tested within each of the user groups. The Center must use at least one of the areas of the synthesized knowledge from paragraph (a)(2) of this priority as a subject for further refinement and testing of KT approaches and strategies.

(c) Increased utilization of approaches and strategies determined to be effective under paragraph (b) of this priority to promote the use of research findings on employment of individuals with disabilities. The Center must contribute to this outcome by:

(1) Providing training and technical assistance to relevant RSA- and NIDRR-funded grantees in the employment area to facilitate the implementation and evaluation of these KT approaches and strategies. Relevant RSA-funded grantees include, but are not limited to, the Technical Assistance and Continuing Education (TACE) Centers. NIDRR-funded grantees in the employment area include a number of research grantees, as well as the Disability and Business Technical Assistance Center (DBTAC) grantees.

(2) Coordinating KT research and development activities with existing NIDRR- and RSA-funded KT and employment projects through consultation with NIDRR project officers.

(3) Using appropriate approaches and strategies established under paragraph (b) of this priority to disseminate the synthesized knowledge established under paragraph (a) of this priority to individuals with disabilities, employers, policy makers, and VR practitioners.

(4) Organizing and hosting a state-of-the-science conference by the end of the fourth project year.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priority justify the costs.

Discussion of costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well

established over the years in that similar projects have been completed successfully. This priority will generate new knowledge through research, development, dissemination, utilization, and technical assistance projects that will enhance the lives of individuals with disabilities by improving their employment outcomes.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: July 7, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–16937 Filed 7–9–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Center on Knowledge Translation (KT) for Employment Research (Center); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–5.

DATES:

Applications Available: July 12, 2010.

Date of Pre-Application Meeting: July 22, 2010.

Deadline for Transmittal of Applications: August 26, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: Research, training, demonstration, development, dissemination, utilization, and technical assistance.

An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Priorities: NIDRR has established two absolute priorities for this competition.

Absolute Priorities: The General DRRP Requirements priority, which applies to all DRRP competitions, is from the notice of final priorities for the Disability and Rehabilitation Research Projects and Centers Program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). The Center on Knowledge Translation (KT) for Employment Research (Center) priority is from the notice of final priority for the Disability and Rehabilitation Research Projects and Centers Program, published elsewhere in this issue of the **Federal Register**.

For FY 2010, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet these priorities.

These priorities are:

General Disability Rehabilitation Research Projects (DRRP) Requirements and *Center on Knowledge Translation (KT) for Employment Research (Center).*

Note: The full text of each of these priorities is included in its notice of final priorities in the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97. (b) The regulations for this program in 34 CFR part 350. (c) The notice of final priorities for the Disability and Rehabilitation Research Projects and Centers program, published in the **Federal Register** on April 28, 2006 (71 FR 25472). (d) The notice of final priority for the Disability and Rehabilitation Research Projects and Centers program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $650,000.

Maximum Award: We will reject any application that proposes a budget exceeding $650,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian Tribes and Tribal organizations.

2. *Cost Sharing or Matching:* Cost sharing is required by 34 CFR 350.62(a) and will be negotiated at the time of the grant award.

IV. Application and Submission Information

1. *Address to Request Application Package:* ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.133A–5.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or

team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 75 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the résumés, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

The application package will provide instructions for completing all components to be included in the application. Each application must include a cover sheet (Standard Form 424); budget requirements (ED Form 524) and narrative justification; other required forms; an abstract, Human Subjects narrative, Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times: Applications Available:* July 12, 2010.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 22, 2010. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact Lynn Medley, U.S. Department of Education, Potomac Center Plaza (PCP), room 5140, 550 12th Street, SW., Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov*.

Deadline for Transmittal of Applications: August 26, 2010.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry:* To do business with the Department of Education, (1) You must have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN); (2) you must register both of those numbers with the Central Contractor Registry (CCR), the Government's primary registrant database; and (3) you must provide those same numbers on your application.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the Disability Rehabilitation Research Projects (DRRP), CFDA Number 84.133A–5, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks

before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the Disability Rehabilitation Research Projects (DRRP)—CFDA Number 84.133A–5 at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.133, not 84.133A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.

• 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. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–5), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133A–5), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Note: NIDRR will provide information by letter to grantees on how and when to submit the final performance report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of accomplishments (*e.g.,* new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.

Each grantee must annually report on its performance through NIDRR's Annual Performance Report (APR) form. NIDRR uses APR information submitted by grantees to assess progress on these measures.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., room 5140, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7338 or by e-mail: *lynn.medley@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

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Dated: July 7, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–16938 Filed 7–9–10; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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